SUPREME COURT OF THE UNITED STATES.

No. 95.

THOMAS ASPDEN, EXECUTOR OF JOHN ASPDEN, DECEASED, AN ALIEN, AND AL., COMPLAINANTS,

vs.

HENRY NIXON, EXECUTOR OF MATHIAS ASPDEN, DECEASED.

ON APPEAL FROM THE CIRCUIT COURT U. S. FOR EAST PENNSYLVANIA.

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In the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, in equity.

SAMUEL PACKER, a citizen of the State of New Jersey.
vs.
HENRY NIXON, esquire, a citizen of the State of Pennsylvania, executor of the testament and last will of Mathias Aspden, esquire, late a citizen of the same State.
} April session, 1828.—No. 1.

To the honorable the judges of the circuit court of the United States, of the third circuit, in and for the eastern district of Pennsylvania, on the equity side of the said court, humbly complaining, sheweth unto your honors, your orator, Samuel Packer, a citizen of the State of New Jersey, the heir at law of Mathias Aspden, the testator hereafter named, that the said Mathias Aspden, of King street, Holborn, London, in that part of the united kingdom of Great Britain and Ireland called England, was formerly a merchant in the city of Philadelphia, but quitted that place when the war broke out between the United States and Great Britain, in the year of our Lord one thousand seven hundred and seventy-six, and went to, and resided in, England until the time of his death, hereafter mentioned, except that he came to the United States, after the conclusion of the said war, for the purpose of settling his affairs and transacting his business, and always returned to England as his home, after his affairs were settled. And the said Matthias Aspden, during his residence in England, as the place of his domicil, invested large sums of money in the purchase of stock and bank annuities in the English funds, and also in the funds of the East India and South Sea Companies. And the said Mathias Aspden departed this life on the ninth day of August, A. D. one thousand eight hundred and twenty-four, being then resident in King street, Holborn, aforesaid, and domiciled in England.

And your orator further sheweth unto your honors, that the said Matthias Aspden, in his lifetime, and at the time of making his will, hereafter mentioned, was possessed of very considerable property, and particularly of very considerable property in the English and American funds, and of various other kinds of personal estate and effects, to a very considerable amount in the whole; and the said Mathias Aspden (being then resident and domiciled in England) made and executed his last will and testament in writing, with three codicils thereto, bearing date the sixth day of December,

A. D. one thousand seven hundred and ninety-one, in the words and figures following, to wit:

"These are to certify, that I do hereby annul and revoke all my former wills, giving and bequeathing my estate, real and personal, to my heir at law, first paying all my just debts and funeral expenses, and the following legacies: first, to each of the children of my half brother Benjamin Hartley, deceased, that may be alive at my death, the sum of one hundred pounds to each, Pennsylvania currency; and to my half sister Bersheba Zane, wife of Elnathan Zane, the sum of four hundred pounds, Pennsylvania currency. Both the above living, or did live, at or near Haddonfield. And to my half brother Roger Hartley, living at present in Lancaster county, the sum of three hundred pounds, of the like currency.

Witness my hand, this 6th day of December, 1791, Philadelphia.

MATHIAS ASPDEN.

"Least any question should arise about the legitimacy of my birth, it is my will that my estate, real and personal, should go to the party who would be my lawful heir in case there might arise no doubt on that head. It is firmly believed, from the best information, that my birth was after marriage.

PHILADELPHIA, *December 6th*, 1791.

I do further give one hundred pounds currency to each of the children of my deceased half sister Ann Hinchman, that may be living at my death.

DECEMBER 6th, 1791."

"*The last will of Mathias Aspden.*

I do hereby appoint my friends Mr. George Roberts, and Mr. Abram Liddon, with the presidentof the Old bank, at the time being, to be my executors to this my last will.

MATHIAS ASPDEN."

"NOTE.—My property in England is as follows: £12,500 in the 4 per cent. stock; £3,000 in the 5 per cent. stock; £1,800 in the 3 per cent. stock." As in and by the probate of the said will, when the same shall be produced to this honorable court, (reference being thereunto had,) will appear.

And your orator further sheweth unto your honors, that the said Mathias Aspden afterwards departed this life on the ninth day of August, A. D. one thousand eight hundred and twenty-four, without having revoked or altered his said will, and without issue, he never having been married.

And your orator further sheweth, that the said George Roberts and Abraham Leddon, both died in the lifetime of the said testator, and Henry Nixon, a citizen of the State of Pennsylvania, was, at the time of the death of the said testator, the president of the Bank of North America, which bank the testator meant and intended by

the description of the Old bank. And the said Henry Nixon caused the said will to be duly proved, according to the laws of Pennsylvania, and having received letters testamentary thereon, took on himself the burthen of the execution thereof, and hath possessed himself of all the goods and chattels, and other personal estate of the said testator, to a very large amount, more than sufficient to pay the funeral expenses, debts, and legacies of the said testator.

And your orator expressly avers, that the said Mathias Aspden, at the time of the making and execution of the said will and testament, and from that time until the time of his death, and also at the time of his death, was resident and domiciled in England.

And your orator further sheweth unto your honors, that the said testator left your orator his heir-at-law, and as evidence thereof, your orator sheweth, that Philip Packer was the common ancestor both of the said testator and of your orator, and died many years ago, having had issue six children, of whom Samuel Packer was his eldest son, who died many years ago, having had issue ten children, of whom Samuel Packer was his eldest, and Daniel Packer his second son; and the said Samuel Packer, last named, having died without issue many years ago, before the death of the testator, the said Mathias Aspden, the saidDaniel Packer became the heir-at-law of his father, the said Samuel Packer first named; and the said Daniel Packer, the son and heir-at-law of the first named Samuel Packer, also died many years ago, before the death of the testator, the said Mathias Aspden, having had five children, of whom your orator is his eldest son and heir-at-law.

And your orator further sheweth unto your honours, that the name of the mother of the said testator, Mathias Aspden, was Rebecca, a daughter of the said Philip Packer, the common ancestor, and sister of the first named Samuel Packer, the grand-father of your orator; and the said Rebecca married, as her second husband, Mathias Aspden, by whom she had issue an only child, viz: the said testator Mathias Aspden; and the said Mathias Aspden, the father, died in Philadelphia, in or about the year one thousand seven hundred and sixty-five, leaving the said testator his only lawful issue, him surviving, so that your orator became, at the death of the said testator, his heir-at-law.

And your orator further sheweth unto your honors, that he is advised and submits, that as such heir-at-law of the said testator, he is entitled, under the said will, to the residue of the personal estate and effects of the said testator, after payment of his funeral expenses, debts, and legacies, which residue amounts to a very large sum.

And your orator further sheweth unto your honors, that he hath repeatedly applied to the said Henry Nixon, to have an account of all and singular [the] personal estate of the said Mathias Aspden, and where and how the same is situated, and what is the true and exact amount thereof, and to have the amount thereof paid to him, deducting therefrom the just and reasonable charges of the said executor.

But now, so it is, may it please your honors, that the said Henry Nixon, combining and confederating with others, to your orator unknown, whose names, when discovered, he prays leave to insert, with apt words to charge them as parties, denies that your orator is the heir-at-law of the said Mathias Aspden, or that he is in any way entitled to the benefit of any of the testamentary dispositions of the said Mathias Aspden, and refuses to render to him any account of the assets, and to pay him any part thereof; all which actings and doings of the said Henry Nixon are contrary to equity and good conscience, and greatly to your orator's prejudice.

In tender consideration whereof, and forasmuch as your orator cannot have plain, adequate, and complete remedy at law, to the end, therefore, that the said Henry Nixon, and his confederates, when discovered, on their oaths and affirmations, full, direct, and true answers may make, to all and singular the matters and things hereinbefore set forth, as if they had been particularly interrogated thereon; and that the said Henry Nixon may render and set forth a just and true account of all and singular the personal estate of the said Mathias Aspden, and where and how the same is situate, and whether there are any, and what, debts due, or claimed to be due therefrom; and may be decreed to pay to your orator the balance of the moneys, effects, and personal property in his hands, belonging to the said estate, to which your orator is justly entitled; and that your orator may have such further relief in the premises, as is consistent with equity and good conscience, and to this honorable court shall seem meet.

May it please your honours to grant a writ of subpœna, to be directed to the said Henry Nixon, commanding him to be and appear on the first day of the next session of this honorable court, then and there to answer all and singular the premises, and to stand to and abide such order and decree, in relation to the premises, as to the court shall seem meet.

WILL'M RAWLE, Jun'r,
for complainant.

SAMUEL PACKER, a citizen of the State of New Jersey,
vs.
HENRY NIXON, a citizen of the State of Pennsylvania, executor of MATTHIAS ASPDEN, esquire, a citizen of Pennsylvania.
} No. 1—in equity.

In the circuit court of the United States, in and for the district of Pennsylvania, and third circuit. April sessions, 1828.

To the honorable the judges of the circuit court of the United States in and for the district of Pennsylvania.

The petition of John Aspden, of Lancashire, in England, a subject of the king of the united kingdom of Great Britain and Ireland,

respectfully sheweth: that he firmly believes and avers that he is entitled, as heir-at-law, and residuary devisee of Matthias Aspden, deceased, the testator named in the bill filed in this cause, to the residue of the estate devised in and by the will of said Matthias Aspden, deceased, and to the funds in the hands of Henry Nixon, the executor named in the said bill, and the defendant in this cause; that your petitioner is, and was, at the time of the death of the said testator, the heir-at-law of Thomas Aspden, who died before the death of said testator; which said Thomas was the heir-at-law of William Aspden, who died before the death of the said Thomas; which said William Aspden was the heir-at-law of Thomas Aspden, the common ancestor deceased, and father of Matthias Aspden, deceased, the father of Matthias Aspden, the testator named in said bill; which said Matthias, the testator, died without leaving issue, and without leaving any brothers or sisters of the whole blood.

Your petitioner avers that the said Matthias Aspden, the testator, at the time of making the said will, was domiciled in the city of London, in the united kingdom of Great Britain and Ireland, and from thenceforth continually had his domicil in the said city of London; and that the said testator, at the time of his death, had his domicil in the said city of London.

Your petitioner therefore prays that he may be admitted a party to the said suit for the purpose of claiming the funds in the hands of the said executor, and to have decreed to him the said fund, and to have all other matters done and decreed, which, in justice and equity, he may be entitled to, and all other and further relief as to your honors may seem meet.

JOHN SERGEANT,
JAMES M. BROOM,
For JOHN ASPDEN.

To the honorable the justices of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, the petition of Jannet, otherwise Janet, Jones, widow of David Jones, deceased, and Mary Poole, widow of Thomas Poole, deceased, both of the city of London, and subjects of the King of the united kingdoms of Great Britain and Ireland, respectfully sheweth:

That your petitioners are the daughters and only children of John Aspden, late of Old street, in the said city of London, who died in the said city, in the year of our Lord 1828, intestate, leaving your petitioners his heirs-at-law.

And your petitioners further shew unto your honors that, at the April sessions of this court, in the year 1828, Samuel Packer, a citizen of the State of New Jersey, by his solicitor, William Rawle, jr., esquire, filed his bill on the equity side of this court, setting forth that a certain Matthias Aspden, a citizen of Pennsylvania,

made his will and testament bearing date the sixth day of December, in the year 1791, whereby he gave his whole estate, real and personal, to his heirs-at-law, that the said testator died in August, 1824, without having revoked his said will; that Henry Nixon, a citizen of the State of Pennsylvania, and then president of the Bank of North America, caused the said will to be duly proved in England, and in the said State of Pennsylvania, procured letters testamentary thereon, and possessed himself of the estate of the testator to a large amount; and the said Samuel Packer expressly charged that he was the heir-at-law of the said Matthias Aspden; that he had applied to the said Henry Nixon for an account of the personal estate of the said testator, and to have the same, after deducting charges and expenses, paid out to him; but that the said executor had denied that he, the said Samuel Packer, was such heir-at-law, and refused to pay him the said balance of the said personal estate; and *to* the said Samuel thereupon prayed such relief in the premises as was consistent with equity, good conscience, and the course of the court, as by the said bill of the said Samuel upon the files of this court, reference being thereunto had, will more fully appear.

And your petitioners further shew unto your honors that the said Henry Nixon appeared and answered the bill of the said Samuel Packer, and therein and thereby declared that the said Matthias Aspden had made his will as set forth in the said bill, and died without revoking the same; that he, the said Henry Nixon, as surviving executor therein named, had proved the said will, and possessed himself of the personal estate of the testator, or some part of it; that the whole of the said estate was claimed by John Aspden, of the city of London, as heir-at-law of the testator under the devise in his will; that the said John Aspden had filed a bill in the court of chancery, in England, and had obtained an injunction restraining him, the said Henry Nixon, from collecting the funds of the estate; that the said estate was claimed by many other persons; and that he, the said Henry, was ready to submit to and act in accordance with the directions of this honorable court, being indemnified and paid his reasonable costs and charges, as, by the said answer filed of record in this honorable court, will fully appear.

And your petitioners further shew unto your honors, that a great number of persons filed their petitions claiming to be entitled under the said will of Matthias Aspden, some to a whole, and some to a distributive part of the estate of the testator in the hands of the executor and elsewhere, and praying to be admitted parties to the said suit, and that inquiries should be made into their respective claims, as by the said petitions filed of record in this honorable court will fully appear.

And your petitioners further shew unto your honors, that it was afterwards ordered by your honors that it be referred to the master

to examine who are the heirs and next of kin of the said Matthias Aspden, with power to examine witnesses as the parties may desire; and also if the heirs and next of kin were not satisfactorily discovered, to make publication. And divers other orders in the premises were subsequently made; under all which orders certain proceedings were had before the said master, who reported the same with sundry exhibits, depositions, and documents annexed, as by the same filed of record in this honorable court will appear.

And your petitioners further shew unto your honors that, after divers other orders and proceedings, on the 26th day of December, A. D. 1833, this honorable court did order, adjudge, and decree that the defendant, the said Henry Nixon, surviving executor of the late Matthias Aspden, deceased, do account for and pay over to John Aspden, of Lancashire, England, one of the said parties, the entire balance of the personal estate of the said Matthias Aspden, after paying the debts and legacies of the said Matthias Aspden, and the costs of this suit; and the said court did further adjudge and decree that the said bill and petitions, so far as they relate to other claimants before this court, however appearing, be dismissed without costs.

And your petitioners further shew unto your honors that, to the above decree, an appeal was entered to the Supreme Court of the United States by certain of the respondents; which appeal was allowed by your honors, and the cause was regularly carried up and prosecuted before their honors the justices of the said Supreme Court.

And your petitioners further shew unto your honors that, after divers proceedings and arguments before the said Supreme Court, it was by the said court ordered, adjudged, and decreed, that the decree of the said circuit court in the premises be, and thereby was, reversed and annulled, and the cause remanded for further proceedings, with directions to the said court to allow the bill and petitions of the claimants to be amended, and the answers and pleadings also to be amended to conform thereto, and proofs to the new matter also to be taken; and with further directions to allow any other person or persons, not theretofore parties to the proceedings, who shall claim title to the funds in controversy as heir, or heirs-at-law, or representatives of the testator, to present their claims respectively before the said court, and to make due proofs thereof, and to become parties to the proceedings for the due establishment for the adjudication thereof. But the proofs already taken in the cause are to be deemed admissable evidence in regard to all such persons not now parties, who shall claim title as aforesaid, and become parties in the cause under this order; and such other proceedings to be had in the said cause, by the said court, as to law, equity, and justice, shall appertain.

And your petitioners further shew unto your honors, that under and by virtue of the above recited order and decree, the said cause

was remanded to this honorable court to proceed therein, as by the said Supreme Court of the United States directed, as by the mandate of said Supreme Court, filed among the records of this honorable court, will appear.

And your petitioners further shew unto your honors, that they claim the whole estate of the said testator, the said Matthias Aspden, under his said will as co-heiresses at law of John Aspden, late of Old street, in the city of London, deceased, who was at the time of the death of the said Matthias Aspden his heir at law, and as such his general devisee, according to the terms of his said abovementioned last will and testament.

And your petitioners further shew unto your honors, that Thomas Aspden, of Simondstone, in Lancashire, who was born, continued during his life, and died a subject of the King of Great Britain and Ireland, domiciled in England, was the common ancestor of the testator, and of the father of your petitioners, and died many years ago, having had issue twelve children, the eldest of whom was named John Aspden, who was baptized on or about the fourth of August, A. D. 1689, and was buried at Deptford, in Kent, England, in the year 1754, the said John having been born, and continued during life, and having died a subject of the King of Great Britain and Ireland, domiciled in England.

And your petitioners further shew unto your honors, that the said last mentioned John Aspden left issue one only son, Andrew Aspden, who died and was buried at Deptford aforesaid, in the year 1771, having been born, continued during life, and died a subject of the King of Great Britain and Ireland, domiciled in England aforesaid. And the said Andrew left the said John Aspden, the father of your petitioners, his only child and heir at law, who was born, continued during life, and died a subject of the King of Great Britain and Ireland, domiciled in England aforesaid.

And your petitioners further shew unto your honors, that the father of the said testator was Matthias Aspden, the third son of the common ancestor, Thomas Aspden, above named, who was born, continued during life, and died a subject of the King of Great Britain and Ireland, domiciled in England aforesaid, but who being resident for some time in America, married there a woman whose Christian name was Rebecca, by whom he had issue, one only child, the said Matthias Aspden; and the said Matthias Aspden, the father of the testator, died in the year 1765, in Philadelphia, leaving the said testator, his only lawful issue, him surviving. And the said Matthias Aspden, the testator, also departed this life without leaving any lawful issue him surviving, and thus upon failure of issue of the said Matthias Aspden, the testator, and of the said Matthias Aspden, the father of the said testator, the said John Aspden, the father of your petitioners, as the grandson and heir at law of the said John Aspden, who was the eldest brother of Matthias Aspden, the father of the said testator, became at the death of the said tes-

tator his heir at law, and as such entitled under the will aforesaid to the residue of his personal estate, after payment of his debts, legacies, and charges, which residue amounts to a large sum, and is in the hands of the said Henry Nixon, the executor aforesaid, and under the control and subject to the jurisdiction of this honorable court.

And your petitioners further shew unto your honors, that the said testator, Matthias Aspden, was born, continued during life, and died a subject of the King of Great Britain and Ireland, and though occasionally absent from England, in pursuit of his trade and business, was at the time of making his said will, and at the time of his death, and during the whole intermediate period, domiciled in the city of London, or elsewhere in England, and fully intended at the date of his said will, and ever after, that his heir at law, according to the common law of England, should take his whole estate, real and personal.

And your petitioners therefore pray, that your honors, in accordance with the order and decree of the said Supreme Court of the United States, will allow and permit them to become parties to the said suit above mentioned, and that the funds in controversy now in the hands of the executor aforesaid, may be decreed to them, as in law, justice, and equity it ought to be.

H. J. WILLIAMS,
JAMES S. SMITH,
Solicitors of the petitioners.

IN THE CIRCUIT COURT OF THE UNITED STATES,
In and for the district of Pennsylvania, in the third circuit.

The petition of John A. Brown, a citizen of the State of Pennsylvania, administrator of the goods and chattels, rights and credits, which were of John Aspden, late of Old street, London, respectfully sheweth: That your petitioner is, as he firmly believes and avers, entitled to have decreed to him as administrator of the said John Aspden, the heir at law of Matthias Aspden, at the time of the death of the said Matthias, and as such, the general devisee in his said last will, intended and described, to the whole of the personal estate of the said Matthias, which said will is set forth in the proceedings in this cause.

And your petitioner further saith, that the said John Aspden was the eldest son of Andrew Aspden, who was the eldest son of John Aspden, who was the eldest paternal uncle of the said testator, and as such, the said Matthias, the testator, and Matthias Aspden, the father of the said testator, having both died without leaving issue, upon the failure of the issue of Matthias, the testator, and Matthias, the father of this testator, was the heir at law of the said testator.

And your petitioner avers, that the said Matthias, the testator, was at the date of his said will, and at the time of his death, and during the whole intermediate [time] between the date of his will and his death, domiciled in London, or elsewhere in England.

Your petitioner therefore prays, that in accordance with the decree of the Supreme Court of the United States in the premises, your honors will permit your petitioner to become party as administrator aforesaid to the said suit, and that the fund in the hands of the executor aforesaid, may be decreed to him, as in law, justice, and equity it ought to be.

H. J. WILLIAMS,
JAMES S. SMITH,
Solicitors for J. A. Brown, administrator.

To the honorable the judges of the circuit court of the United States, third circuit, in and for the district of Pennsylvania.

The answer of Henry Nixon to the bill of complaint, filed as an amended bill of Samuel Packer, complainant.

This defendant, now and at all times hereafter, saving to himself all and all manner of benefit of exception or otherwise, that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer unto, answering, saith: that he has heard and believes that Matthias Aspden, the testater named in the said bill, was formerly a merchant of the city of Philadelphia, and that at some time or other not known to this defendant, he left that place and went to England. This defendant does not deny that the time may have been *that* stated in the bill, and he has no knowledge, and neither admits or denies anything with regard to the fact alleged in the bill, that the said Matthias Aspden resided in England until the time of his death, or any thing in relation thereto. The defendant admits that large investments were made by the said Matthias Aspden as stated in the said bill. He also admits that Matthias Aspden died on or about the day mentioned in the bill, but whether resident in the place mentioned by the complainant, he does not know. The defendant believes, and therefore admits, that at the time of making the will mentioned in the complainant's bill, the said Matthias Aspden was possessed of very considerable property in the English and American funds, and of other personal estate and effects to a considerable amount. The defendant also admits that the said Matthias Aspden (whether then resident and domiciled in England the defendant does not know, and submits, if it be important, that proof be made thereof in due and proper manner and form) made and executed his last will and testament in writing, with three codicils thereto, bearing date the sixth day of December, one thousand seven hundred and ninety-one, and that the said will and codicils are correctly set forth in the complainant's said bill, and that George Roberts and Abraham Liddon, therein named as executors, died in the lifetime of the testator, and that Matthias Aspden departed this life on or about the ninth day of August, one thousand eight hundred and twenty-four, without hav-

ing revoked or altered his said will, and without issue, he never having been married; and that this defendant was, at the time of the death of the said testator, the president of the Bank of North America, which bank (the defendant entertains no doubt) the testator meant and intended by the description of the old bank; and that the defendant caused the said will to be duly proved, according to the laws of Pennsylvania, and having received letters testamentary thereon, took on himself the burthen of the execution thereof, and hath possessed himself, as far as he was able, of all the goods and chattels and other personal estate of the said testator, to a very large amount, more than sufficient to pay the funeral expenses, debts, and legacies of the said testator. This defendant has no knowledge as to the domicil or residence of the said Matthias Aspden, from the time of the date of the said will until the period of his death, nor has the defendant any knowledge whether he left the said Samuel Packer his heir at law; or as to the chain of consanguinity set forth in the said bill, purporting to connect the said Samuel Packer as heir at law with the said Matthias Aspden, the testator; or as to the title of the said complainant, under the said will, to the residue of the personal estate and effects of the said testator, after payment of his funeral expenses, debts, and legacies, all which matters, if material to the complainant, this defendant prays of the court that he may be required to prove.

This defendant further states, that he is willing and ready, and always has been so since he has received and collected the effects belonging to the estate of the said Matthias Aspden, to pay and distribute the same according to law and justice, and as in duty he may be bound to do, and to the person or persons duly entitled to receive the same. But the funds in the hands of the defendant are claimed, not only by the said Samuel Packer, the complainant, but by sundry other persons, each denying the right of the other, or asserting exclusively their own. After sundry proceedings before this honorable court, and before the Supreme Court of the United States, all of which appear upon the record of the said courts, petitions were filed in this honorable court by different persons, which have been received and entertained, and as the defendant is informed and believes, will be acted on by this honorable court.

On the fifteenth day of June last past, petitions were filed on behalf of *John Aspden*, of Lancashire, in England; of *Janet Jones* and *Mary Poole*, alleging themselves to be the daughters and only children of John Aspden, late of Old street, in the city of London; of *John A. Brown*, administrator of the goods and chattels, rights and credits, which were of *John Aspden*, late of Old street, London; of *Mary Harrison*, by John Brown Francis, in right of his wife Elizabeth, as testamentary guardian of the said Mary Harrison; of *George Harrison*; of *Thomas H. White*, *Henry Reed*, and *Elizabeth White* Reed, formerly Elizabeth White Bronson, in right of

his said wife; *Ann Emily Bronson*, *Hetta Atwater Bronson*, and *William White Bronson*, minor children of Mary Bronson, deceased, by Thomas H. White, their lawful guardian, and Thomas H. White, executor of the last will and testament of *Elizabeth Macpherson*, deceased; of *James McMurtrie*, and *Rebecca* his wife, in right of his said wife; of *Mary Ann Church*; of Joseph Worrell and Anne his wife, in the right of the said Anne; of *Mahlon* Doan and *Rebecca* his wife, late *Rebecca Hartley*, in right of said Rebecca; of *Samuel Champion*, and *Sarah* his wife, late Sarah Zane, in right of said Sarah; of *Rebecca Borrough*, *Ashur Hartley*, *Bathsheba Brick*, *Samuel Brick* and *Elizabeth* his wife, *John Brick*, *Thomas Hartley*, *Edmund Brown*, *Mary Brown*, *Elisha Brown*, *Benjamin Brown*, *James Brown*, *Chalkley Brown*, and *Israel Brown*; of *John Zane*, and *Isaac Zane*.

And on the sixth day of this present month of July, petitions were filed in behalf of *Edward Hartley* and *Thomas Adams*, in right of his wife *Barsheba*, formerly Barsheba Hartley, and of *Rebecca Bolton*, respectively, claiming for the several petitioners named in each of the said petitions, the fund in the hands of the defendant. Some of the said petitioners aver, that the said Matthias Aspden, the testator, at the time of making his said will, and at the time of his death, and during the whole intermediate period, was domiciled in the city of London, or elsewhere in England, and like averments are made by the said complainant in his amended bill; while others of the said petitioners aver, that Matthias Aspden, the testator, was domiciled in the State of Pennsylvania, at the time of making his said will, and also at the time of his death, and also during the whole period which intervened between the making of the said will and his death. This defendant submits to your honors the materiality and the truth of these several averments, and prays that, if material, due and legal proof may be made in relation thereto. This defendant, under the circumstances aforesaid, is in danger of being greatly harassed on account of the said conflicting and irreconcileable claims, and cannot safely pay the fund aforesaid to any of the said complainants without the aid and protection of this honorable court; and he prays that the said complainant and petitioners may be decreed to adjust their several claims and demands between themselves, or that this honorable court will adjudge and decree between them, as to justice and equity may appear right; this defendant hereby offering to account for and pay the said fund to such of them, the said complainant and petitioners, as the same shall appear of right to belong and be payable to, or to such other persons, if there be any other better entitled than they, as this honorable court shall designate and approve, on being indemnified by this honorable court in so doing. The defendant prays leave to suggest, with regard to certain petitioners above referred to, that transactions have occurred which may render a special defence applicable to their case, which will not apply to the case of

the complainant, or that of the other petitioners; he therefore asks leave, with regard to the petitions of Janet Jones and Mary Poole, alleging themselves to be the daughters and only children of John Aspden, late of Old street, in the city of London, and of John A. Brown, administrator of the goods and chattels, rights and credits, which were of the said John Aspden, late of Old street, London, to file special pleas along with this his amended answer.

This defendant further states, that proceedings are now depending before the orphan's court for the city and county of Philadelphia, for the settlement and adjustment of his accounts as executor of Matthias Aspden aforesaid, the same being a court of final jurisdiction, and having full cognizance of the matter. He respectfully asks that this honorable court will, in the consideration of the complainant's bill, and the petitions aforesaid, have such regard to the said proceedings, as to make no decree that can prejudice the defendant in relation thereto, but that, in his rights and obligations towards another and a competent tribunal, he may be preserved and protected.

The defendant annexes to his answer a true and correct statement of the fund under his control, belonging to the said estate, exhibiting the manner in which it is now invested.

And this defendant denies all and all manner of unlawful combination and confederacy, without this, that there is any other matter, cause, or thing, in the said bill of the complainant, or in the said petitions contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided, or denied, is true to the knowledge and belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain and prove, as this honorable court shall provide for; and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

J. R. INGERSOLL, *for the defendant.*

Henry Nixon the defendant, being sworn according to law, deposeth and saith, that the facts and statements contained in the foregoing answer, so far as they are derived from his own knowledge and within the same, are true, and so far as they are derived from the information of others, they are true, to the best of his knowledge, judgment and belief.

H. NIXON.

Sworn and subscribed, this fourth day of August, 1835, before me,
A. PETTIT, *Ald'n.*

Henry Nixon, executor, in account with estate of Matthias Aspden.

1833.	Dr.		
Dec. 28th	The executor charges himself with the balance of account rendered, and filed in the office of the register of wills, &c. - - - -	-	$410,627 65
1834.			
Feb. 1st	Cash received for interest on Pennsylvania State five per cent. stock - - - -	$3,350 00	
	Interest on city of Philadelphia five per cent. loan	125 00	
	Dividend on 300 shares Bank of the United States	1,050 00	
	Ditto on 20 shares ditto - -	70 00	
5th	Interest on notes discounted on collateral security	275 00	
8th	Ditto ditto ditto -	1,198 92	
July 8th	Interest on city of Philadelphia five per cent. loan	125 00	
16th	Ditto on Union canal loan - - -	30 00	
18th	Dividend on 300 shares Bank of the United States	1,050 00	
	Ditto on 20 ditto - - -	70 00	
23d	Ditto on Girard bank stock - - -	75 00	
Aug. 1st	Interest on Pennsylvania five per cent. stock -	3,350 00	
8th	Interest on notes discounted on collateral security	1,213 62	
Oct. 1st	Final dividend from old Bank of the United States	20 50	
16th	Interest on Union canal loan - - -	30 00	
	Interest on notes discounted on collateral security	3,453 08	
1835.			
Jan. 2d	Interest on city of Philadelphia five per cent. loan	125 00	
15th	Dividend on 300 shares Bank of the United States	1,050 00	
	Ditto on 20 shares ditto - -	70 00	
16th	Ditto on Union canal loan - - -	30 00	
Feb. 19th	Interest on notes discounted on collateral security	5,132 47	
	Interest on Pennsylvania State five per cent. stock	6,267 13	
April 16th	Interest on Union canal loan - - -	30 00	
	Interest on city of Philadelphia five per cent. stock	125 00	
	Interest on notes discounted on collateral security	1,605 16	
July 16th	Back interest due from Union Canal Company for interest on loan due July and October, 1833, with interest, (scrip) - - - - -	85 20	
	Interest on notes discounted on collateral security	5,435 75	
	Interest on Union canal loan - - -	30 00	
17th	Dividend on 300 shares of Bank of the U. States -	1,050 00	
	Ditto on 20 shares ditto - -	70 00	
18th	Ditto on Girard bank stock - - -	100 00	
Aug. 1st	Interest on notes discounted on collateral security	1,099 60	
	Interest on bonds and mortgages - - -	1,066 67	
	Interest on Pennsylvania State five per cent. stock	6,850 00	
	Dividend on Girard bank stock, received November 18th, 1834, and omitted - - -	100 00	
			45,808 10
			$456,435 75

ACCOUNT—Continued.

	Cr.		
1833.	The executor claims allowance for the following sums paid by him:		
1834.			
Jan. 10th	Cash paid F. Hopkinson, esq'r, clerk of the district court	$75 59	
Feb. 1st	Lydia R. Bailey, for printing documents per order of the court	46 10	
May 24th	B. Tilghman, esquire's account	75 87	
July 10th	F. Hopkinson, esq'r, clerk of the district court	121 37	
1835.			
Feb. 1st	Advance and brokerage on one hundred and forty thousand dollars invested in Pennsylvania State five per cent. stock, as per bill	-	$14,523 23
June 16th	Paid B. Tilghman, esq'r	1 75	
	William T. Carroll, for expenses of appeal to Supreme Court at Washington	230 51	
	H. Nixon's expenses to Washington to attend the Supreme Court	80 00	
			631 19
	Commission for receiving interest and dividends, $45,808 10, at 2½ per cent.	1,145 20	
	Commission on investing one hundred and forty thousand dollars in Pennsylvania State five per cent. stock, cost $154,523 23, at 2½ per cent.	3,863 07	
			5,008 27
Aug. 1st	Balance in hands of executor	-	$436,273 06

SCHEDULE.

Pennsylvania State five per cent. stock	$140,000	
Ditto ditto ditto	134,000	
		$274,000 00
Bills receivable on collateral security		72,574 09
Stock in Bank of the United States, 320 shares		32,000 00
Stock in Girard bank, 50 shares		3,007 50
City of Philadelphia five per cent. stock		5,000 00
Union Canal loan		2,000 00
H. J. Williams' mortgage		12,000 00
J. McAlister's ditto		16,843 75
Charles Shippen's ditto		5,000 00
J. Hay's mortgage		3,905 00
Cash in bank		9,942 72
		$436,273 06

Henry Nixon, executor, in account with estate of Matthias Aspden.

		Dr.		
1833.				
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1834.				
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		Interest on city of Philadelphia five per cent. loan	125 00	
		Dividend on 300 shares Bank of the United States	1,050 00	
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	5th	Interest on notes discounted on collateral security	275 00	
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July	8th	Interest on city of Philadelphia five per cent. loan	125 00	
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Aug.	1st	Interest on Pennsylvania five per cent. stock -	3,350 00	
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		Interest on notes discounted on collateral security	1,605 16	
July	16th	Back interest due from Union Canal Company for interest on loan due July and October, 1833, with interest, (scrip) - - - - -	85 20	
		Interest on notes discounted on collateral security	5,435 75	
		Interest on Union canal loan - - -	30 00	
	17th	Dividend on 300 shares of Bank of the U. States -	1,050 00	
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		Interest on bonds and mortgages - - -	1,066 67	
		Interest on Pennsylvania State five per cent. stock	6,850 00	
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				$456,435 75

ACCOUNT—Continued.

		Cr.		
1833.	The executor claims allowance for the following sums paid by him:			
1834.				
Jan. 10th	Cash paid F. Hopkinson, esq'r, clerk of the district court - - - - - -		$75 59	
Feb. 1st	Lydia R. Bailey, for printing documents per order of the court - - - - -		46 10	
May 24th	B. Tilghman, esquire's account - - -		75 87	
July 10th	F. Hopkinson, esq'r, clerk of the district court -		121 37	
1835.				
Feb. 1st	Advance and brokerage on one hundred and forty thousand dollars invested in Pennsylvania State five per cent. stock, as per bill - - -		-	$14,523 23
June 16th	Paid B. Tilghman, esq'r - - - -		1 75	
	William T. Carroll, for expenses of appeal to Supreme Court at Washington - - -		230 51	
	H. Nixon's expenses to Washington to attend the Supreme Court - - - - -		80 00	
				631 19
	Commission for receiving interest and dividends, $45,808 10, at 2½ per cent. - - -		1,145 20	
	Commission on investing one hundred and forty thousand dollars in Pennsylvania State five per cent. stock, cost $154,523 23, at 2½ per cent. -		3,863 07	
				5,008 27
Aug. 1st	Balance in hands of executor - - -		-	$436,273 06

SCHEDULE.

Pennsylvania State five per cent. stock - - -	$140,000	
Ditto ditto ditto - - -	134,000	
		$274,000 00
Bills receivable on collateral security - - - - -		72,574 09
Stock in Bank of the United States, 320 shares - - - -		32,000 00
Stock in Girard bank, 50 shares - - - - - -		3,007 50
City of Philadelphia five per cent. stock - - - - -		5,000 00
Union Canal loan - - - - - - - -		2,000 00
H. J. Williams' mortgage - - - - - -		12,000 00
J. McAlister's ditto - - - - - - -		16,843 75
Charles Shippen's ditto - - - - - - -		5,000 00
J. Hay's mortgage - - - - - - -		3,905 00
Cash in bank - - - - - - - - -		9,942 72
		$436,273 06

PACKER, vs. NIXON. } In Equity.

Circuit court of the United States, for the eastern district of Pennsylvania, in the third circuit. April sessions, 1828, No. 1.

The plea of Henry Nixon, the defendant, to the bill or petition of Jennet, otherwise Janet Jones, widow of David Jones, deceased, and Mary Poole, widow of Thomas Poole, deceased, both of the city of London, and subjects of the king of the United Kingdom of Great Britain and Ireland.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill or petition mentioned to be true, in such manner and form as the same are therein and thereby set forth and alledged, doth plead in bar to the said bill or petition, and for plea saith: that John Aspden in the said bill or petition of the said complainants alledged to have been the heir at law of Mathias Aspden, the testator, at the time of the death of the said Mathias, and as such the general devisee or legatee, in his said last will intended and described, of the whole of the personal estate of the said Mathias, and since deceased, exhibited his original bill of complaint in the high court of chancery, of that part of the United Kingdom of Great Britain and Ireland called England, which was afterwards amended by an order of the said court, bearing date the 28th day of May, 1827, against this defendant, and against Samuel Williams, John Sterling, the governor and company of the Bank of England, the honorable company of merchants trading to the East India, the honorable company of merchants trading to the South Seas, Henry Hoare, Henry Hugh Hoare, Charles Hoare and Henry Merrick Hoare, thereby stating and charging the same matters and things in substance, as are stated and charged in the bill or petition of said complainant in this court, and thereby praying, that an account might be taken by the direction of the said high court in chancery, of the personal estate of the said Mathias Aspden, possessed or received by, or come to the hands of this defendant, or any person or persons by his order or for his use, or got in, or possessed, or secured in any way, since the decease of the said Mathias Aspden; and that such personal effects and estate might be applied in payment of the said Mathias Aspden's funeral and testamentary expenses, and debts, and legacies, in a due course of administration, and that the residue of such personal estate and effects might be ascertained and that the said complainant, John Apsden, might be declared by the high court of chancery to be entitled, upon the true construction of the will of the said Mathias Aspden, in the said bill of complaint of the said John Aspden set forth, as heir of the said testator, Mathias Aspden, to such residue, and that such residue might be accordingly

directed by the said court of chancery to be paid to the said complainant, John Aspden; and that in the mean time this defendant might be restrained by injunction of the said court from withdrawing from England any part of the personal estate and effects of the said testator, and the said Samuel Williams and John Sterling, from receiving or remitting the said estate and effects, or any part to this defendant, and particularly from selling or transferring the bank stock, three per cent. consolidated bank annuities, reduced three and a half per cent. bank annuities, new four per cent. bank annuities, East India stock, and South Sea stock, standing in the testator's name, and mentioned in the said complainant's bill of complaint, and from receiving the dividends thereon respectively, and the monies, securities and effects, in the hands of the Messrs. Hoares, or any other, the personal estate and effects of the said testator in England; and also, to restrain the said governor and company of the Bank of England, and the said honorable East India Company, and the said honorable South Sea Company respectively, from making, or permitting to be made, any transfer or sale of such stock or bank annuities, or any part of the same respectively; and also to restrain the said Messrs. Hoares from paying over all or any part of monies, securities and effects, of the said testator in their hands; and also, that the governor and company of the Bank of England might be directed to transfer the said respective stocks and annuities, then standing in the name of the said testator in their books, and all dividends accrued, due thereon respectively, unto the name of the accountant general of the said high court of chancery; and also, that proper directions might be given for the sale of said stocks there respectively standing in the name of the said testator, in the respective books of the East India Company, and the South Sea Company; and that the monies arising from such sale, might be, together with any other monies belonging to the estate of the said testator, and paid into the said high court of chancery, be laid out in the purchase of stock in the three per cent. consolidated bank annuities, in the name of the said accountant general, in trust in the said cause; and that the said defendants, Henry Hugh Hoare, Charles Hoare, Henry Merrick Hoare, might be restrained from paying and delivering the monies, securities and effects, of the testator, in their hands, to this defendant, or the said Samuel Williams and John Sterling; and that the said Henry Hugh Hoare, Charles Hoare, and Henry Merrick Hoare, might be ordered to pay the said monies of the said testator in their hands, unto the said court of chancery; and that the said defendants, Samuel Williams and John Sterling, might be restrained, by the injunction of the said court, from remitting any part of the estate and effects of the said testator in England, to this defendant; and that some proper person might be appointed by the said high court of chancery, to receive and get in all the personal estate and effects of the said testator, and for further relief. And this defendant further saith, that by

an order of the said high court in chancery, bearing date the 9th day of August, 1825, such injunction to restrain the sale and transfer of the said stock and funds, and the receipt of the dividends thereof, as hereinafter is mentioned to have been dissolved, was granted; and that by an order, dated the 31st day of July, 1826, made in the said cause, in the said high court of chancery, certain monies, part of the estate of the said Mathias Aspden, was ordered to be paid into court, and the same were accordingly paid into court.

And this defendant further saith, that this defendant, and the other defendants to the said bill of complaint in the high court of chancery, except the said Esther Hartley, who was out of the jurisdiction, put in their respective answers to the said bill of complaint of the said John Aspden; and this defendant by his said answer stated, amongst other things, that he believed that Mathias Aspden, the testator in the said bill named, was born on or about the year 1756, at Philadelphia, in North America, being the place of residence of his parents; that he continued to reside, and was afterwards engaged in business as a merchant, with some success, before he was twenty-one years of age; and that upon the breaking out of the war between Great Britain and America, in the year 1776, or some time in that year, being still a minor, he went to England, with what view this defendant was not able, from his own knowledge, to say; but he believed he went with an impression that the power of Great Britain must soon prevail in putting down the resistance made in America, and that the testator subsequently came several times to the United States of America, and invested large funds there in the public or Government stocks, and in other securities; and that he made his will and codicil thereto at Philadelphia, the place of his birth, and deposited them in the bank there; but whether, after so returning to the United States of America, the said testator went back to England as his home, or only for the purpose of superintending his property there, and whether the said testator did in fact change his domicil, this defendant did not know, and was unable to answer from his belief, or otherwise; but that this defendant believed that the said testator, when in England, considered himself an alien, and as such claimed to have returned the tax from his dividends, while he was absent from England, according to the provisions of the act exempting aliens from the tax, if not resident in England.

And this defendant further saith, that the said John Aspden, the complainant in the said cause in the high court of chancery, having departed this life, whereby the said suit in the said court was abated, Jennet, otherwise Janet, Jones, and Thomas Poole and Mary his wife, which Jennet or Janet and Mary were the only children, and next of kin, of the said John Aspden, on or about the 18th day of March, 1828, exhibited their bill of revivor in the said high court of chancery against this defendant, and the other defen-

dants in the said original and amended bill in the said high court of chancery, therein stating the said proceedings in the said original cause, and the death of the said complainant, John Aspden, intestate, leaving the said complainants, Janet Johnes and Mary Poole, his only children and next of kin; and that the said Janet Jones and Mary Poole had obtained letters of administration of the goods and chattels, debts and credits of the said intestate, to be granted to them sub of the prerogative court of the archbishop of Canterbury, and thereby praying that the said suit and proceedings, which so became abated as therein and heretofore mentioned, might stand revived, and be in the same plight and condition as the same were in at the time of the death of the said John Aspden.

And this defendant further saith, that the said suit was afterwards duly revived, and that this cause being at issue, came on to be heard before his honor the chancellor of England, on the 17th day of July, 1830, when his honor was pleased to order and decree that the injunction awarded in the original cause of Aspden against Nixon, pursuant to an order made in the said cause, bearing date the 9th day of August, 1825, to restrain the defendants, Samuel Williams and John Sterling, from selling or transferring the four thousand pound bank stock, ten thousand pound three pound per cent. consolidated bank annuities, six thousand pound three pound ten shilling per cent. reduced annuities, and six thousand pound bank four pound per cent. annuities, not assented to, (the said six thousand five hundred pound and six thousand pound in the said injunction, stated by mistake as twelve thousand five hundred pound reduced three pound ten shilling per cent. annuities, and three thousand five hundred pound new four pound per cent. annuities,) and the said last named defendants to be restrained from selling or transferring the said three thousand pound East India stock, and five thousand South Sea stock; and that the said defendants, Samuel Williams and John Sterling, should be in like manner restrained from receiving any dividends due or to become due on the said bank annuities and stocks respectively, save and except the dividends then already due on the said East India stock and South Sea stock; and that the said defendants, the governor and company of the Bank of England, should be also restrained from making or permitting to be made any transfer or sale of the said bank annuities or stocks, and from paying any dividends thereon; and that the said defendants, the East India company, should be in like manner restrained from making or permitting to be made any sale or transfer of the three thousand pound East India stock; and that the said defendants, the South Sea company, should be in like manner restrained from making or permitting to be made any transfer or sale of the five thousand pound stock; and that the said defendants, the East India company and the South Sea company, should also be in like manner restrained from paying any future dividends to accrue due upon the said East India company and South Sea stock respec-

an order of the said high court in chancery, bearing date the 9th day of August, 1825, such injunction to restrain the sale and transfer of the said stock and funds, and the receipt of the dividends thereof, as hereinafter is mentioned to have been dissolved, was granted; and that by an order, dated the 31st day of July, 1826, made in the said cause, in the said high court of chancery, certain monies, part of the estate of the said Mathias Aspden, was ordered to be paid into court, and the same were accordingly paid into court.

And this defendant further saith, that this defendant, and the other defendants to the said bill of complaint in the high court of chancery, except the said Esther Hartley, who was out of the jurisdiction, put in their respective answers to the said bill of complaint of the said John Aspden; and this defendant by his said answer stated, amongst other things, that he believed that Mathias Aspden, the testator in the said bill named, was born on or about the year 1756, at Philadelphia, in North America, being the place of residence of his parents; that he continued to reside, and was afterwards engaged in business as a merchant, with some success, before he was twenty-one years of age; and that upon the breaking out of the war between Great Britain and America, in the year 1776, or some time in that year, being still a minor, he went to England, with what view this defendant was not able, from his own knowledge, to say; but he believed he went with an impression that the power of Great Britain must soon prevail in putting down the resistance made in America, and that the testator subsequently came several times to the United States of America, and invested large funds there in the public or Government stocks, and in other securities; and that he made his will and codicil thereto at Philadelphia, the place of his birth, and deposited them in the bank there; but whether, after so returning to the United States of America, the said testator went back to England as his home, or only for the purpose of superintending his property there, and whether the said testator did in fact change his domicil, this defendant did not know, and was unable to answer from his belief, or otherwise; but that this defendant believed that the said testator, when in England, considered himself an alien, and as such claimed to have returned the tax from his dividends, while he was absent from England, according to the provisions of the act exempting aliens from the tax, if not resident in England.

And this defendant further saith, that the said John Aspden, the complainant in the said cause in the high court of chancery, having departed this life, whereby the said suit in the said court was abated, Jennet, otherwise Janet, Jones, and Thomas Poole and Mary his wife, which Jennet or Janet and Mary were the only children, and next of kin, of the said John Aspden, on or about the 18th day of March, 1828, exhibited their bill of revivor in the said high court of chancery against this defendant, and the other defen-

dants in the said original and amended bill in the said high court of chancery, therein stating the said proceedings in the said original cause, and the death of the said complainant, John Aspden, intestate, leaving the said complainants, Janet Johnes and Mary Poole, his only children and next of kin; and that the said Janet Jones and Mary Poole had obtained letters of administration of the goods and chattels, debts and credits of the said intestate, to be granted to them sub of the prerogative court of the archbishop of Canterbury, and thereby praying that the said suit and proceedings, which so became abated as therein and heretofore mentioned, might stand revived, and be in the same plight and condition as the same were in at the time of the death of the said John Aspden.

And this defendant further saith, that the said suit was afterwards duly revived, and that this cause being at issue, came on to be heard before his honor the chancellor of England, on the 17th day of July, 1830, when his honor was pleased to order and decree that the injunction awarded in the original cause of Aspden against Nixon, pursuant to an order made in the said cause, bearing date the 9th day of August, 1825, to restrain the defendants, Samuel Williams and John Sterling, from selling or transferring the four thousand pound bank stock, ten thousand pound three pound per cent. consolidated bank annuities, six thousand pound three pound ten shilling per cent. reduced annuities, and six thousand pound bank four pound per cent. annuities, not assented to, (the said six thousand five hundred pound and six thousand pound in the said injunction, stated by mistake as twelve thousand five hundred pound reduced three pound ten shilling per cent. annuities, and three thousand five hundred pound new four pound per cent. annuities,) and the said last named defendants to be restrained from selling or transferring the said three thousand pound East India stock, and five thousand South Sea stock; and that the said defendants, Samuel Williams and John Sterling, should be in like manner restrained from receiving any dividends due or to become due on the said bank annuities and stocks respectively, save and except the dividends then already due on the said East India stock and South Sea stock; and that the said defendants, the governor and company of the Bank of England, should be also restrained from making or permitting to be made any transfer or sale of the said bank annuities or stocks, and from paying any dividends thereon; and that the said defendants, the East India company, should be in like manner restrained from making or permitting to be made any sale or transfer of the three thousand pound East India stock; and that the said defendants, the South Sea company, should be in like manner restrained from making or permitting to be made any transfer or sale of the five thousand pound stock; and that the said defendants, the East India company and the South Sea company, should also be in like manner restrained from paying any future dividends to accrue due upon the said East India company and South Sea stock respec-

tively, until the defendants should fully answer the said bill, or the said court should make other order to the contrary, should be dissolved, and that the sum of £228 1 11 each, in the bank placed to the credit of the cause of Aspden vs. Nixon, should be paid to the defendant, Henry Nixon; and for the purpose aforesaid the accountant general of the said court was to draw on the bank, according to the form prescribed by the act of Parliment, and the general rules and orders of the court in that case made and provided; and that the said complainant's said bill should stand dismissed out of the said court, with costs to be taxed by the master of the said court in rotation.

And this defendant further saith, that the said decree has been duly signed and enrolled, and this defendant doth aver, that the said suit in the said high court of chancery so as aforesaid revived and brought to hearing by the said complainants, Jennet Jones, otherwise Janet Jones, and Thomas Poole and Mary his wife, administrators of the said John Aspden, against this defendant, and the said other defendants thereto, was for the same matters and things, and to the same effect, and for the like relief and purposes as against this defendant, the said complainants or petitioners, by their said present bill of complaint or petition in this court sets forth, seeks relief for.

And this defendant saith, that the said Thomas Poole has since departed this life, leaving the said Jennet or Janet Jones to survive him; and this defendant avers, that the said Jennet or Janet are the same persons by whom the present bill of complaint or petition is exhibited in this honorable court.

(And this defendant also avers, that the said Matthias Aspden, at the time of the making of his last will, and at the time of his death, and during the whole intermediate period between the making of his will and his death, was domiciled in London, or elsewhere in England.) [Struck out by order of the court on the 28th December, 1835, to amend.]

And therefore this defendant doth plead the said decree of the said high court in chancery, signed and enrolled as aforesaid in bar to the said complainants' or petitioners' present bill of complaint or petition in this honorable court, and humbly prays the judgment of the honorable court, whether he shall be compelled to make any further or other answer thereto. And this defendant prays to be hence dismissed, as far as relates to said petition or bill, with his reasonable costs in this behalf wrongfully sustained.

J. R. INGERSOLL, *for defendant.*

Henry Nixon, the defendant in the annexed plea named, being duly sworn according to law, says, that the said plea is true to the best of his knowledge, judgment, and belief. That he has seen certain papers, purporting to be copies of the bill of complaint and other proceedings in the high court of chancery in England, stated

in the said plea, which he believes to be true and genuine, and he firmly believes the proceedings took place as they are set forth in the said plea. He has seen a paper purporting to be the copy of an affidavit made by Thomas Peters, of Hemlock court, Carey street, in the county of Middlesex, verifying the copy of a decretal order of the court of chancery aforesaid, wherein Esther Hartley is named as one of the defendants, and as being out of the jurisdiction of the court; and she is named and referred to in like manner in the paper purporting to be a copy of such decretal order, which the deponent has seen and read; wherefore the defendant believes, she was out of the jurisdiction of the said court. He cannot say whether her answer was actually filed, although, as stated in the said plea, he believes that the other defendants, except the said Esther Hartley, put in their respective answers.

The defendant further says, that a certain petition was filed on the fifteenth of June, 1835, or about that time, in the circuit court of the United States, for the eastern district of Pennsylvania, in behalf of Jennet Jones, otherwise Janet Jones, widow of David Jones, deceased, and Mary Poole, widow of Thomas Poole, deceased, whereby it is stated and made to appear, that they, the said petitioners, are the daughters and only children of John Aspden, late of Old street, in the city of London; and whereby it also appears, that Thomas Poole is dead, and the defendant believes, that they, the said Jennet Jones and Mary Poole, are the same persons by whom the bills of complaint and revivor in chancery, and bill in the exchequer, were filed.

H. NIXON.

Sworn and subscribed, this thirteenth day of June, 1836, in open circuit court.

FRANCIS HOPKINSON, *Clerk C. C. U. S.*

PACKER, vs. NIXON. } No. 1.—In equity.

Circuit court of the United States, for the eastern district of Pennsylvania, in the third circuit, April session, 1828.

The plea of Henry Nixon, the defendant, to the bill or petition of Jennet otherwise Janet Johnes, widow of David Jones, deceased, and Mary Poole, widow of Thomas Poole, deceased, both of the city of London, and subjects of the King of the united kingdoms of Great Britain and Ireland.

This defendant, by protestation, not confessing or acknowledging all or any of the things or matters in the said complainant's bill or petition mentioned to be true, in such manner and form as the same are therein and thereby set forth and alleged, doth plead in bar to the said bill or petition, and for plea saith, that Jennet otherwise Janet Jones, of Old street, in the parish of St. Luke, in

the county of Middlesex, widow, and Thomas Poole, of Hoxton, in the same county, yeoman, and Mary his wife, administrators of John Aspden, of Old street, London, deceased, exhibited their original bill of complaint in the court of exchequer at Westminster, in that part of the united kingdom of Great Britain and Ireland called England, against this defendant, and against the governor and company of the Bank of England, the East India Company, and the South Sea Company, and against Henry Hugh Hoare, Charles Hoare, and Henry Merrick Hoare, therein and thereby stating and charging, in substance, the same matters and things as are stated and charged in the bill or petition of the said complainant in this court, thereby praying that the defendant, Henry Nixon, might set forth an account of the personal estate and effects of the said testator, possessed by him, or by any person or persons by his order, or for his use, and how, and in what manner, the same has been disposed of; and that an account might be taken by, and under the direction of, the said court of exchequer, of the personal estate and effects of the said testator, possessed or received by, or come to the hands of, the said defendant Henry Nixon, or of any other person or persons by his order, or for his use; and that such personal estate and effects might be applied, so far as the same had not already been done, in payment of the funeral and testamentary expenses, debts, and legacies of the said testator Mathias Aspden, in a due course of administration; and that the residue of such personal estate and effects might be ascertained; and that John Aspden, (who, in the said bill or petition of the said complainant in this honorable court, is alleged to have been the heir-at-law of Mathias Aspden, the testator, and, as such, the general devisee, in his said last will intended and described, of the whole of the personal estate of the said Mathias,) and who is since deceased, might be declared, by the said court of exchequer, to have been entitled, under the will of the said testator, as the heir-at-law of the said testator, according to the law of England, to such residue; and that such residue might be directed by the said court of exchequer to be paid and transferred to Jennet otherwise Janet Jones, and Thomas Poole and Mary his wife, the complainants in the said bill in the said court, as the personal representatives of the said John Aspden, deceased; and that in the mean time, the said defendant Henry Nixon might be restrained, by the injunction of the said court, from collecting or receiving any part of the personal estate and effects of the said testator in England, and particularly from selling or transferring the sums of £4,000 bank stock, £10,000 three per cent. consolidated bank annuities, £6,500 reduced 3½ per cent. bank annuities, and £3,500 new four per cent. annuities, standing in the books of the governor and company of the Bank of England, in the name of the said testator; and from selling, transferring, or receiving the sum of £6,000 four per cent. annuities, (not assented to take three pounds ten shilling per cent. per annum in lieu thereof,

in the manner and at the times required by the act of the fifth *of* year of the reign of his late majesty, the King of the united kingdom of Great Britain and Ireland,) also standing in the books of the said governor and company of the Bank of England, in the name of the said testator; and from selling or transferring the sum of £3,000 stock standing in the books of the said East India Company, in the name of the said testator; and the sum of £5,000 stock standing in the books of the South Sea Company, in the name of the said testator, and from receiving the dividends or interests upon any of the several stocks or funds as aforesaid; and that the said defendants, the governor and company of the Bank of England, and the said defendants, the East India Company, and the said defendants, the South Sea Company, might be respectively restrained from permitting any transfers of such respective sums to be made; and that the said defendants, the governor and company of the Bank of England, might be directed to transfer the said respective stock, there standing in the name of the said testator in the said books, and all dividends accrued thereon respectively, into the name of the accountant general of the said court of exchequer, in trust in the said cause, and to pay into the bank, to the credit of the accountant general in the said cause, the sum of £6,000, payable in respect of the same sum of four per cent. annuities there standing in the name of the said testator, not assented to as aforesaid; and that proper directions might be given for the sale of the said stock, respectively, standing in the name of the said testator, in the respective books of the East India Company, and the South Sea Company; and that the money arising from such sale might, together with any other monies belonging to the estate of the said testator, and paid into court, be laid out in the purchase of stock in the three per cent. consolidated bank annuities, in the name of the accountant general, in trust in the said cause; and that some proper person might be appointed by the said court to receive and get in all other outstanding personal estate and effects of the said testator, and for further relief.

And this defendant further saith, that this defendant put in his plea in bar to the said bill of complaint, and in said plea, among other things, stated, that John Aspden, in the said bill of complaint alleged to have been the heir-at-law, according to the law of England, of Mathias Aspden, the testator in the said bill of complaint named, at the time of the death of the said testator, and to be since deceased, on or about the 30th day of July, 1825, exhibited his original bill of complaint in the high court of chancery in England, which was afterwards amended, by order of the said court, bearing date the 28th day of May, 1827, against this defendant, and the other defendants to the said bill of complaint of the said complainants in the said court of exchequer, and also against Samuel Williams and John Sterling, therein named as the attorneys of this defendant, to collect and receive the property and effects of the said

testator in England, and Esther Hartley, therein named, alleged to claim to be entitled to a share of the property of the said testator, as one of his next of kin, and to be out of the jurisdiction of the said court of chancery, thereby stating and charging the same matters and things as were stated and charged in the said bill of complaint of the said complainants in the said court of exchequer, save as to the death of the said John Aspden, and as to the said complainants having become his legal personal representative; and thereby praying that an account might be taken, by the direction of the said high court of chancery, of the personal estate and effects of the said Mathias Aspden, possessed by, or received by, or come to the hands of this defendant, or of any other person or persons by his order, or for his use, or got in, or possessed, or received in any way since the decease of the said Mathias Aspden; and that such personal estate and effects might be applied in payment of the said Mathias Aspden's funeral and testamentary expenses, and debts and legacies, in a due course of administration, and that the residue of such personal estate and effects might be ascertained; and that the said complainant John Aspden might be directed by the said court of chancery to be entitled, upon the true construction of the will of the said Mathias Aspden, in the said bill of complaint of the said John Aspden set forth, as heir of the said testator Mathias Aspden, to such residue; and that such residue might be accordingly directed by the said court of chancery to be paid to the said complainant John Aspden; and that in the mean time this defendant, and the defendants Samuel Williams and John Sterling, might be restrained, by the injunction of the said court, from collecting and receiving any part of the personal estate and effects of the said testator Mathias Aspden in England, and particularly from selling and transferring the sums of £4,000 bank stock, £10,000 three pound per cent. consolidated bank annuities, £6,500 reduced 3½ per cent. bank annuities, [?] four pound per cent. annuities, not assented to take £3 10 0 per cent. per annum in lieu thereof, in the manner, and at the times required by an act of parliament of the fifth year of his then majesty, King George the 4th, and £3,500 new four per cent. bank annuities, then standing in the books of the said governor and company of the Bank of England, in the name of the said testator Mathias Aspden; and the sum of £3,500 stock standing in the books of the said East India Company, in the name of the said testator; and the sum of £5,000 stock in the books of the South Sea Company, in the name of the said testator; and from receiving the dividends or interest thereon, respectively, and the moneys, securities, and effects then in the hands of Messrs. Hoares, as bankers of the said testator; and that the governor and company of the Bank of England, and the East India Company, and the South Sea Company, all of them defendants to the said bill of complaint in the said high court of chancery, might be respectively restrained from permitting any transfer of such respective

sums to be made; and also, that the governor and company of the Bank of England might be directed to transfer the said respective stock and annuities then standing in the name of the said testator in their books, and all dividends accrued [and] due thereon respectively, unto the name of the accountant general of the said high court of chancery; and also that proper directions might be given for the sale of the said stock, then respectively standing in the name of the said testator, in the respective books of the East India Company and the South Sea Company; and that the moneys arising from such sale might, together with any other moneys belonging to the estate of the said testator, and paid unto the said high court of chancery, be laid out in the purchase of stock in the three per cent. consolidated bank annuities, in the name of the said accountant general of such last mentioned court, in trust in the said cause; and that the said defendants Henry Hugh Hoare, Charles Hoare, Henry Merrick Hoare, might be restrained from paying and delivering the moneys, securities, and effects of the said testator in their hands to this defendant, or the said Samuel Williams and John Sterling; and that the said Henry Hugh Hoare, Charles Hoare, and Henry Merrick Hoare, might be ordered to pay the said money of the said testator in their hands, into the said court of chancery; and that the said defendants Samuel Williams and John Sterling might be restrained, by the injunction of the said court, from remitting any part of the estate or effects of the said testator in England to this defendant; and that some proper person might be appointed by the said high court of chancery to receive and get in all the personal estate and effects of the said testator, and for further relief.

That by an order of the said high court of chancery, bearing date the 9th day of August, 1825, such injunction to restrain the sale and transfer of the said funds and stocks, and the receipt of the dividends thereof, as in the said plea was afterwards mentioned to have been dissolved, was granted, and that by an order dated the 31st day of July, 1826, made in the said cause, in the said high court of chancery, certain monies, part of the estate of the said Mathias Aspden, were ordered to [be] paid into court, and the same were accordingly paid into court. That this defendant and the other defendants in the said bill of complaint in the high court of chancery, except the said Esther Hartley, who was out of the jurisdiction, put in their respective answers to the said bill of complaint of the said John Aspden, and this defendant by his said answer stated, among other things, that he believed that Mathias Aspden, the testator in the said bill named, was born on or about the year 1756, at Philadelphia, in North America, being the place of residence of his parents; that he continued to reside, and was afterwards engaged in business at Philadelphia, as a merchant, with some success, before he was 21 years of age; and that upon the breaking out of the war between Great Britain and America, in the

year 1776, or some time in that year, being still a minor, he went to England, but with what view this defendant was not able from his own knowledge to say, but he believed he went with an impression that the power of Great Britain must soon prevail in putting down the resistance made in America; and that the said testator subsequently came several times to the United States of America, and invested large sums there in the public or Government stocks, and other securities, and that he made his will and the codicils thereto at Philadelphia, the place of his birth, and deposited them in the bank there; but whether after so returning to the United States of America, the said testator went back to England as his home, or only for the purpose of superintending his property there; whether the said testator did in fact change his domicil, this defendant did not know, and was unable to answer from his belief or otherwise; but this defendant believed that the said testator, when in England, considered himself an alien, and as such claimed to have returned the tax from his dividends while he was absent from England, according to the provisions of the act exempting aliens from tax if not resident in England. That the said John Aspden, the complainant in the said cause, in the said high court of chancery, having departed this life, whereby the said suit in the said court became abated, the said complainant Jennet otherwise Janet Jones, and Thomas Poole and Mary his wife, on or about the 18th day of March, 1828, exhibited their bill of revivor in the said high court of chancery against this defendant, and the other defendants in the said original and amended bill in the said high court of chancery, thereby stating the said proceedings in the said original cause, and the death of the said complainant, John Aspden, intestate, leaving the said complainants, Janet Jones, Mary Poole, his only children and next of kin; and that the said Janet Jones and Mary Poole had obtained letters of administration of the goods, chattels, debts and credits, of the said intestate, to be granted to them out of the prerogative court of the Archbishop of Canterbury; and thereby praying that the said suit and proceedings which so became abated as therein mentioned, might stand revived, and be in the same plight and condition as the same were in at the time of the death of the said John Aspden; that the said suit was afterwards duly revived, and the cause being at issue, came on to be heard before his honor, the Chancellor of England, on the 17th day of July, 1830, when his honor was pleased to order and decree that the injunction awarded in the original cause of Aspden against Nixon, pursuant to an order made in the said cause, bearing date the 9th day of August, 1825, to restrain the defendants, Samuel Williams and John Sterling, from selling or transferring £4,000 bank stock, £10,000 three pound per cent. consolidated bank annuities, £6,500 £3 10 0 per cent. reduced annuities, and £6,000 bank four pound per cent. annuities not assented to, (the said £6,500 and £6,000 in the said injunction, stated by mistake as £12,500 reduced £3 10 0

per cent. annuities,) and £3,500 new £4 per cent. annuities; and the said last named defendants to be restrained from selling or transferring the said £3,000 East India stock, and £5,000 South Sea stock, and that the said defendants, Samuel Williams and John Sterling, should be in like manner restrained from receiving any dividends due or to become due on the said bank annuities and stocks respectively, save and except the dividends then already due on the said East India and South Sea stocks; and that the said defendants, the governor and company of the Bank of England, should also be restrained from making, or permitting to be made, any transfer or sale of the bank annuities and stocks, and from paying any dividends thereon, and that the said defendants, the East India Company, should be in like manner restrained from making, or permitting to be made, any sale or transfer of the £3,000 East India stock; and that the said defendants, the South Sea Company, should be in like manner restrained from making, or permitting to be made, any transfer or sale of the £5,000 stock; and that the said defendants, the East India Company, and the South Sea Company, should be also in like manner restrained from paying any future dividends to accrue due upon the said East India Company and South Sea stocks respectively, until the defendants should fully answer the said bills, or the said court should make further order to the contrary, should be dissolved, and that the sum of £228 1 11 cash, in the bank, placed to the credit of the cause of Aspden against Nixon, should be paid to the defendant, Henry Nixon; and for the purpose aforesaid, the accountant general of the said court was to draw on the bank according to the form prescribed by the act of Parliament, and the general rules and orders of the court in that case made and provided, and that the said complainants' said bill should stand dismissed out of the said court, with costs, to be taxed by the master of the said court in rotation; that the said decree had been since duly signed and enrolled, and that this defendant did aver, that the said suit in the said high court of chancery, so as aforesaid revived and brought to hearing by the said complainants, Jennet Jones, otherwise Janet Jones, and Thomas Poole [and] Mary his wife, against this defendant, and the said other defendants thereto, was, for the same matters and to the same effect, and for the like relief and purposes, as against this defendant, and the said other defendants thereto, being also defendants to the said complainants' bill of complaint in the said court of exchequer, as the said complainants did, by their said bill of complaint in the said court of exchequer, set forth and seek relief as against this defendant, and the said other defendants to the said bill of complaint in the said court of exchequer; and therefore this defendant did plead the said decree of the said high court of chancery, signed and enrolled as aforesaid, in bar to the said complainants' said bill of complaint in the said court of exchequer, and humbly prayed the judgment of the said court, whether he should be compelled to make any further or other

answer thereto, and prayed to [be] thence dismissed with his reasonable costs in that behalf wrongfully sustained.

And this defendant further saith, that the said cause being at issue, came on to be heard before the said court of exchequer on the 4th day July, 1831, when the said court was pleased to order and decree that the said plea, so as aforesaid pleaded by this defendant in bar of the said complainants' bill of complaint in the said court, should be allowed, and that the said complainants' said bill of complaint should stand dismissed out of the said court.

And this defendant further saith, that the said decree of the said court of exchequer has been duly signed and enrolled; and this defendant doth aver that the said suit, in the said court of exchequer, so as aforesaid brought to a hearing by the said complainants, Jennet Jones, otherwise Janet Jones, and Thomas Poole [and] Mary his wife, administrators of the said John Aspden, against this defendant, and the said other defendants thereto, was, for the same matters and to the same effect, and for the like relief and purposes, as against this defendant, the said complainants or petitioners, by their said present bill of complaint or petition in this honorable court, sets forth and seeks for. And this defendant further saith, that the said Thomas Poole hath since departed this life, leaving the said Jennet or Janet Jones and Mary Poole to survive him; and this defendant avers, that the said Jennet or Janet and Mary, are the same persons by whom the present bill of complaint or petition is exhibited in this honorable court. (And this defendant also avers, that the said Mathias Aspden, at the time of the making of the said last will and testament, and at the time of his death, and during the whole intermediate period between the making of his said last will and testament and his death, was domiciled in London, or elswhere in England.)—[Struck out under the order of the court, to be amended, 28th December, 1835.] And therefore, this defendant doth plead the said decree of the said court of exchequer, signed and enrolled as aforesaid, in bar to the said complainants' present bill of complaint or petition in this honorable court, and prays the judgment of this honorable court, whether he shall [be] compelled to make any further or other answer thereto. And this defendant prays to be hence dismissed, so far as relates to the present bill of complaint or petition, with his reasonable costs in this behalf wrongfully sustained.

J. R. INGERSOLL, *for df't.*

Henry Nixon, the defendant in the annexed plea named, being duly sworn according to law, says that the said plea is true to the best of his knowledge, judgment, and belief. That he has seen certain papers, purporting to be copies of the bill of complaint, and other proceedings, in the court of exchequer in England, stated in the said plea, which he believes to be true and genuine; and he firmly believes that the proceedings took place as they are set forth

in the said plea. He also believes that the said bill and proceedings were for the same matters and to the same effect, and for the like relief and purposes, as the said bill in chancery revised by the complainants, Jennet Jones and Mary Poole; and that the bills filed in the exchequer, and in chancery in England, are for the same matters and to the same effect, and for the like relief and purpose, as the bill and petition in this court, by the said Jennet Jones and Mary Poole. The defendant further says, that a certain petition was filed on or about the fifteenth day of June, 1835, in the circuit court of the United States for the eastern district of Pennsylvania, in behalf of Jennet Jones, otherwise Janet Jones, widow of David Jones, deceased, and Mary Poole, widow of Thomas Poole, deceased, whereby it is stated and made to appear that they, the said petitioners, are the daughters and only children of John Aspden, late of Old street, in the city of London; and whereby also it appears, that Thomas Poole is dead; and the defendant believes that they, the said Jennet Jones and Mary Poole are the same persons by whom the bills of complaint and revivor in chancery, and bill in the exchequer, were filed.

H. NIXON.

Sworn and subscribed, this thirteenth day of June, 1836, in open circuit court.

FRA. HOPKINSON, *Cl'k Circuit Ct.*

PACKER vs. NIXON. } No. 1—in equity.

Circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, April session, 1828.

The plea of Henry Nixon, the defendant, to the bill or petition of John A. Brown, administrator of John Aspden, late of Old street, London, deceased.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said complainant's bill or petition mentioned to be true, in such manner and form as the same are therein and thereby set forth and alleged, doth plead in bar to the said bill or petition, and for plea saith: that John Aspden, in the said bill or petition of the said complainant, alleged to have been the heir-at-law of Matthias Aspden, the testator at the time of the death of the said Matthias, and as such the general devisee or legatee, in his said last will intended and described, of the whole of the personal estate of the said Mathias, and since deceased, exhibited his original bill of complaint in the high court of chancery of that part of the united kingdom of Great Britain and Ireland called England, which was afterwards amended by an order of the said court, bearing date the 28th day of May, 1827, against this defendant and against Samuel Williams, John Ster-

ling, the governor and company of the Bank of England, the honorable company of merchants trading to the East Indies, the honorable company of merchants trading to the South Seas, Henry Hoare, Henry Hugh Hoare, Charles Hoare, and Henry Merrick Hoare, thereby stating and charging the same matters and things, in substance, as are stated and charged in the bill or petition of the said complainant in this court, save as to the petitioner having become the administrator of the said John Aspden, and thereby praying that an account might be taken by the direction of the said high court in chancery of the personal estate and effects of the said Mathias Aspden, possessed or received by, or come to, the hands of this defendant, or of any person or persons by his order, or for his use, or got in, or possessed, or secured in any way since the decease of the said Mathias Aspden; and that such personal effects and estate might be applied in payment of the said Mathias Aspden's funeral and testamentary expenses and debts, and legacies, in a due course of administration; and that the residue of such personal estate and effects might be ascertained; and that the said complainant, John Aspden, might be declared, by the said high court of chancery, to be entitled, upon the true construction of the will of the said Mathias Aspden, in the said bill of complaint of the said John Aspden set forth, as heir of the said testator, Mathias Aspden, to such residue; and that such residue might be accordingly directed by the said court of chancery, to be paid to the said complainant, John Aspden; and that, in the mean time, this defendant might be restrained, by injunction of the said court, from withdrawing from England any part of the personal estate and effects of the said testator; and the said Samuel Williams and John Sterling from receiving or remitting the said estate and effects, or any part thereof, to this defendant; and particularly from selling or transferring the bank stock, three per cent. consolidated bank annuities, reduced three and a half per cent. bank annuities, new four per cent. bank annuities, East India stock, and South Sea stock, standing in the testator's name, and mentioned in the said complainant's bill of complaint; and from receiving the dividends thereon respectively, and the monies, securities, and effects in the hands of the Messrs. Hoares, or any other, the personal estate and effects of the said testator in England; and also to restrain the said governor and company of the Bank of England, and the said honorable East India company, and the said honorable South Sea company, respectively, from making, or permitting to be made, any transfer or sale of such stock or bank annuities, or any part of the same, respectively; and also to restrain the said Messrs. Hoares from paying over all or any part of the monies, securities, and effects of the said testator in their hands; and also, that the governor and company of the Bank of England might be directed to transfer the said respective stocks and annuities there standing, in the name of the said testator, in their books, and all dividends accrued

due thereon, respectively, unto the name of the accountant general of the said high court of chancery; and also that proper directions might be given for the sale of the said stocks there respectively standing, in the name of the said testator, in the respective books of the East India company and the South Sea company; and that the monies arising from such sale might, together with any other monies belonging to the estate of the said testator, and paid into the said high court of chancery, be laid out in the purchase of stock in the three per cent. consolidated bank annuities, in the name of the said accountant general, in trust in the said cause; and that the said defendants, Henry Hugh Hoare, Charles Hoare, Henry Merrick Hoare, might be restrained from paying and delivering the monies, securities, and effects of the testator in their hands to this defendant, or the said Samuel Williams and John Sterling; and that the said Henry Hugh Hoare, Charles Hoare, and Henry Merrick Hoare, might be ordered to pay the said monies of the said testator in their hands into the said court of chancery; and that the said defendants, Samuel Williams and John Sterling, might be restrained by the injunction of the said court from remitting any part of the estate and effects of the said testator, in England, to this defendant; and that some proper person might be appointed by the said high court in chancery to receive and get in all the personal estate and effects of the said testator, and for further relief.

And this defendant further saith, that by an order of the said high court in chancery, bearing date the 9th day of August, 1825, such injunction to restrain the sale and transfer of the said stock and funds, and the receipt of the dividends thereof, as hereinafter is mentioned, to have been dissolved, was granted; and that by an order dated the 31st day of July, made in the said cause, in the said high court of chancery, certain monies, part of the estate of the said Mathias Aspden, were ordered to be paid into court, and the same were accordingly paid into court.

And this defendant further saith, that this defendant, and the other defendants to the said bill of complaint in the high court of chancery, except the said Esther Hartley, who was out of the jurisdiction, put in their respective answers, to the said bill of complaint of the said John Aspden, and this defendant, by his said answer, stated amongst other things, that he believed that Mathias Aspden, the testator in the said bill named, was born in or about the year 1756, at Philadelphia, in North America, being the place of residence of his parents; that he continued to reside, and was afterwards engaged in business as a merchant, with some success before he was twenty-one years of age; and that upon the breaking out of the war between Great Britain and America, in the year 1776, or some time in that year, being still a minor, he went to England, with what view this defendant was not able from his own knowledge to say, but he believed that he went with an im-

pression, that the power of Great Britain must soon prevail, in putting down the resistance made in America; and that the testator subsequently came several times to the United States of America, and invested large sums there in the public or Government stocks, and in other securities, and that he made his will and codicil thereto at Philadelphia, the place of his birth, and deposited them in the bank there; but whether, after so returning to the United States of America, the said testator went back to England as his home, or only for the purpose of superintending his property there, and whether the said testator did in fact change his domicil, this defendant did not know, and was unable to answer from his belief or otherwise; but that this defendant believed that the said testator, when in England, considered himself an alien, and as such claimed to have returned the tax from his dividends, while he was absent from England, according to the provisions of the act exempting aliens from the tax if not resident in England.

And this defendant further saith, that the said John Aspden, the complainant in the said cause in the high court of chancery, having departed this life, whereby the said suit in the said court was abated, Jennett, otherwise Jenet Jones, and Thomas Poole and Mary his wife, which Jennett or Jenet, and Mary, were the only children, and next of kin of the said John Aspden, and by whose procurement, and as attorney of whom the complainant or petitioner, John A. Brown, claimed and received letters of administration on the estate of the said John Aspden, from the register for the probate of wills, and granting letters of administration for the city and county of Philadelphia, on or about the 18th day of March, 1828, exhibited their bill of revivor in the said high court of chancery against this defendant, and the other defendants in the said original and amended bill in the said high court of chancery, therein stating the said proceedings in the said original cause, and the death of the said complainant John Aspden, intestate, leaving the said complainants, Jenet Jones and Mary Poole his only children and next of kin; and that the said Jennet Jones and Mary Poole, had obtained letters of administration of the goods and chattels, debts and credits of the said intestate, to be granted to them out of the prerogative court of the Archbishop of Canterbury; and thereby praying, that the said suit and proceedings which so became abated, as therein and heretofore mentioned, might stand revived, and be in the same plight and condition as the same were in at the time of the death of the said John Aspden.

And this defendant further saith, that the said suit was afterwards duly revived, and that this cause being at issue, came on to be heard before his honor, the Chancellor of England on the 17th day of July, 1830, when his honor was pleased to order and decree, that the injunction awarded in the original cause of Aspden against Nixon, pursuant to an order made in the said cause bearing date the 9th day of August, 1825, to restrain the defendants Samuel

Williams and John Sterling from selling or transferring the £400 bank stock, £10,000 £3 per cent. consolidated bank annuities, £6,000 £3 10 per cent. reduced annuities, and £6,000 bank £4 per cent. annuities not assented to, (the said £6,500 and £6,000 in the said injunction stated by mistake as £12,500 reduced £3 10 per cent. annuities,) and £3,500 new £4 per cent. annuities; and the said last named defendants to be restrained from selling or transferring the said £3,000 East India stock, and £5,000 South Sea stock; and that the said defendants, Samuel Williams and John Sterling, should be in like manner restrained from receiving any dividends due, or to become due, on the said bank annuities and stocks respectively, save and except the dividends then already due on the said East India and South Sea stocks; and that the said defendants, the governor and company of the Bank of England, should be also restrained from making, or permitting to be made, any transfer or sale of the said bank annuities or stocks, and from paying any dividends thereon; and that the said defendants, the East India Company, should be in like manner restrained from making, or permitting to be made, any sale or transfer of the £3,000 East India stock; and that the said defendants, the South Sea Company, should be in like manner restrained from making, or permitting to be made, any transfer or sale of the £5,000 stock; and that the said defendants, the East India Company, and the South Sea Company, should be also, in like manner, restrained from paying any future dividends to accrue due upon the said East India Company and South Sea stock, respectively, until the defendants should fully answer the said bill, or the said court should make other order to the contrary, should be dissolved, and that the sum of £228 1 11, cash in the Bank, placed to the credit of the cause Aspden vs. Nixon, should be paid to the defendant, Henry Nixon; and for the purpose aforesaid, the accountant general of the said court, was to draw on the bank according to the form prescribed by the act of Parli[a]ment, and the general rules and orders of the court in that case made and provided, and that the said complainant's said bill should stand dismissed out of the said court, with costs to be taxed by the master of the said court in rotation.

And this defendant further saith, that the said decree has been duly signed and enrolled, and this defendant doth aver, that the said suit in the said high court of chancery so as aforesaid revived and brought to hearing by the said complainants Jennett Jones, otherwise Jenet Jones, and Thomas Poole and Mary his wife, administrators of the said John Aspden, against this defendant, and the said other defendants thereto, was for the same matters and to the same effect, and for the like relief and purposes as against this defendant, the said complainant or petitioner, by this said present bill of complaint or petition in this court sets forth and seeks relief for, as administrator of the said John Aspden, upon whose estate this defendant avers administration was claimed by and granted to the

said complainant or petitioner, as the attorney in fact of the children and next of kin and administrators of the said John Aspden in England, and as ancilliary to the administration there, and for no other cause, end, or purpose whatsoever.

And, therefore, this defendant doth plead the said decree of the said high court in chancery, signed and enrolled as aforesaid, in bar to the said complainants' or petitioners' present bill of complaint or petition in this honorable court, and humbly prays the judgment of the honorable court, whether he shall be compelled to make any further or other answer thereto.

And this defendant prays to be hence dismissed, so far as relates to the said petition or bill, with his reasonable costs in this behalf wrongfully sustained.

J. R. INGERSOLL, *for defendant.*

Henry Nixon, the defendant in the annexed plea named, being duly sworn according to law, says, that the said plea is true to the best of his knowledge, judgment, and belief. That he has seen certain papers purporting to be copies of the bill of complaint, and the proceedings in the high court of chancery, in England, stated in the said plea, which he believes to be true and genuine, and he firmly believes the proceedings took place as they are set forth in the said plea. He has seen a paper purporting to be a copy of an affidavit, made by Thomas Peters, of Hemlock court, Cavey street, in the county of Middlesex, verifying the copy of a decretal order of the court of chancery aforesaid, wherein Esther Hartley is named as one of the defendants, and as being out of the jurisdiction of the court, and she is named and referred to in like manner in the paper purporting to be a copy of such decretal order, which the deponent has seen and read; therefore, the defendant believes, she was out of the jurisdiction of the said court. He cannot say whether her answer was actually filed, although as stated in the said plea, he believes that the other defendants, except the said Esther Hartley, put in their respective answers. The defendant farther says, that a certain petition was filed on the fifteenth of June, 1835, or about that time, in the circuit court of the United States, for the eastern district of Pennsylvania, in behalf of Jennett Jones, otherwise Janet Jones, widow of David Jones, deceased, and Mary Poole, widow of Thomas Poole, deceased, whereby it is stated and made to appear, that they, the said petitioners, are the daughters and only children of John Aspden, late of Old street, in the city of London; and whereby it also appears, that Thomas Poole is dead, and that the defendant believes that they, the said Jenet Jones and Mary Poole, are the same persons by whom the bills of complaint and revivor in chancery, and bill in the exchequer, were *pled.*

H. NIXON.

Sworn and subscribed, this thirteenth of June, 1836, in open circuit court.

FRA. HOPKINSON, *Clerk circuit court.*

CIRCUIT COURT OF THE UNITED STATES,
for the eastern district of Pennsylvania, in the third circuit.

PACKER vs. NIXON. } April session, 1828, No. 1, in equity.

The plea of Henry Nixon, the defendant to the bill or petition of John A. Brown, administrator of John Aspden, late of Old street, London, deceased.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said complainants' bill or petition mentioned to be true, in such manner and form as the same are therein and thereby set forth and alleged, doth plead in bar to the said bill or petition, and for plea saith:

That Jennet, otherwise Janet Jones, of Old street, in the parish of St. Luke, in the county of Middlesex, widow, and Thomas Poole, of Hoxton, in the same county, yeoman, and Mary his wife, administrators of John Aspden, of Old street, London, deceased, exhibited their original bill of complaint in the court of exchequer, at Westminster, in that part of the United Kingdom of Great Britain and Ireland called England, against this defendant, and against the Governor and Company of the Bank of England, the East India Company, and the South Sea Company, and against Henry Hugh Hoare, Charles Hoare, and Henry Merrick Hoare, therein and thereby stating and charging in substance the same matters and things as are stated and charged in the bill or petition of the said complainant in this court, save as to the petitioners having become the administrators of John Aspden, of Old street, London, in the said bill or petition named, and thereby praying that the defendant, Henry Nixon, might set forth an account of the personal estate and effects of the said testator, possessed by him, or by any person or persons by his order, or for his use, and how and in what manner the same had been disposed of, and that an account might be taken by, and under the direction of, the said court of exchequer, of the personal estate and effects of the said testator, possessed or received by, or come to the hands of the said defendant, Henry Nixon, or of any other person or persons by his order, or for his use, and that such personal estate and effects might be applied, so far as the same had not already been done, in payment of the funeral and testamentary expenses, debts, and legacies of the said testator, Mathias Aspden, in due course of administration; and that the residue of such personal estate and effects might be ascertained, and that John Aspden, (who in the said bill or petition of the said complainants in this honorable court, is alleged to have been the heir at law of Mathias Aspden, the testator, and as such the general devisee in his said last will intended and described, of the whole of the personal estate of the said Mathias,) and who is since deceased, and upon whose estate the said complainant or petitioner in this honorable court

claimed and received letters of administration from the register for the probate of wills, and granting of letters of administration in and for the county of Philadelphia, as the attorney in fact of the children and next of kin and administrator of the said John Aspden, in England, might be declared by the said court of exchequer to have been entitled, under the will of the said testator, as the heir at law of the said testator, according to the law of England, to such residue, and that such residue might be directed by the said court of exchequer to be paid and transferred to Jennet, otherwise Janet Jones, and Thomas Poole and Mary his wife, the complainants in the said bill in the said court, as the personal representatives of the said John Aspden, deceased; and that in the mean time the said defendant, Henry Nixon, might be restrained by the injunction of the said court, from collecting or receiving any part of the personal estate and effects of the said testator in England, and particularily from selling or transferring the sums of £4,000 bank stock; £10,000 three per cent. consolidated bank annuities; £6,500 reduced three and a half per cent. bank annuities; and £3,500 new four per cent. annuities, standing in the books of the Governor and Company of the Bank of England, in the name of the said testator; and from selling, transferring, or receiving the sum of £6,000 four per cent. annuities, (not assented to take three pounds ten shillings per cent. per annum in lieu thereof, in the manner and at the times required by the act of the fifth of the year of the reign of his late Majesty, the King of the United Kingdom of Great Britain and Ireland;) also, standing in the books of the said Governor and Company of the Bank of England, in the name of the said testator, and from selling or transferring the sum of £3,000 stock, standing in the books of the said East India Company, in the name of the said testator, and the sum of £5,000 stock, standing in the books of the South Sea Company, in the name of the said testators, and from receiving the dividends or interests upon any of the several stocks or funds aforesaid; and that the said defendants, the Governor and Company of the Bank of England, and the said defendants, the East India Company, and the said defendants, the South Sea Company, might be respectively restrained from permitting any transfers of such respective sums to be made; and that the said defendants, the Governor and Company of the Bank of England, might be directed to transfer the said respective stock, then standing in the name of the said testator in the said books; and all dividends accrued thereon, respectively, into the name of the accountant general of the said court of exchequer, in trust in the said cause, and to pay into the bank to the credit of the accountant general in the said cause, the sum of £6,000, payable in respect of the same sum of four per cent. annuities, then standing in the name of the said testator, not assented to as aforesaid; and that the proper directions might be given for the sale of the said stock, respectively, standing in the name of the said testator in the respective books of the East India Company, and of the South

Sea Company, and that the money arising from such sale might, together with any other moneys belonging to the estate of the said testator, and paid into court, be laid out in the purchase of stock in the three per cent. consolidated bank annuities, in the name of the accountant general, in trust, in the said cause; and that some proper person might be appointed by the said court, to receive and get in all other the outstanding personal estate and effects of the said testator, and for further relief.

And this defendant further saith, that this defendant put in his plea in bar to the said bill of complaint; and in his said plea, among other things, stated, that John Aspden, in the said bill of complaint alleged to have been the heir at law, according to the law of England, of Mathias Aspden, the testator in the said bill of complaint named, at the time of the death of such testator, and to be since deceased, on or about the 30th day of July, 1825, exhibited his original bill of complaint in the high court of chancery of England, which was afterwards amended by order of the said court, bearing date the 28th day of May, 1827, against this defendant and the other defendants, to the said bill of complaint of the said complainants in the said court of exchequer, and also against Samuel Williams and John Sterling, therein named as the attornies of this defendant, to collect and receive the property and effects of the said testator in England, and Esther Hartley, therein alleged to claim to be entitled to a share of the property of the said testator as one of his next of kin, and to be out of the jurisdiction of the said court of chancery, thereby stating and charging the same matters and things as were stated and charged in the said bill of complaint of the said complainants in the said court of exchequer, save as to the death of the said John Aspden, and as to the said complainants having become his legal personal representative; and thereby praying that an account might be taken by the direction of the said high court of chancery of the personal estate and effects of the said Mathias Aspden, possessed by, or received by, or come to the hands of this defendant, or of any other person or persons by his order, or for his use, or got in or possessed, or received in any way since the decease of the said Mathias Aspden; and that such personal estate and effects might be applied in payment of the said Mathias Aspden's funeral and testamentary expenses, and debts, and legacies, in a due course of administration, and that the residue of such personal estate and effects might be ascertained; and that the said complainant, John Aspden, might be directed by the said court of chancery to be entitled, upon the true construction of the will of the said Mathias Aspden, in the said bill of complaint of the said John Aspden set forth as heir of the said testator Mathias Aspden, to such residue, and that such residue might be accordingly directed by the said court of chancery to be paid to the said complainant John Aspden; and that, in the mean time, this defendant, and the defendants Samuel Williams and John Sterling, might be restrain-

ed by the injunction of the said court from collecting and receiving any part of the personal estate and effects of the said testator, Mathias Aspden, in England, and particularly from selling and transferring the sums of £4,000 bank stock, £10,000 three pounds per cent. consolidated bank annuities, £6,500 reduced 3½ per cent. bank annuities, four pounds per cent. annuities, not assented to take £3 10 0 per cent. per annum in lieu thereof, in the manner, and at the times, required by an act of Parliament of the fifth year of his then majesty King George the 4th, and £3,500 new four per cent. bank annuities, then standing in the books of the said Governor and Company of the Bank of England in the name of the said testator Mathias Aspden; and the sum of £3,500 stock standing in the books of the said East India Company in the name of the said testator; and the sum of £5,000 stock standing in the books of the South Sea Company, in the name of the said testator; and from receiving the dividends or interest thereon, respectively, and the monies, securities, and effects, then in the hands of Messers. Hoare, as bankers of the said testator; and that the Governor and Company of the Bank of England, and the East India Company, and the South Sea Company, all of them defendants to the said bill of complaint in the said high court of chancery, might be respectively restrained from permitting any transfer of such respective sums to be made; and also that the Governor and Company of the Bank of England might be directed to transfer the said respective stock and annuities, then standing in the name of the said testator in their books, and all dividends accrued due thereon, respectively, unto the name of the accountant general of the said high court of chancery; and also that proper directions might be given for the sale of the said stock then respectively standing in the name of the said testator, in the respective books of the East India Company and the South Sea Company; and that the monies arising from such sale might, together with any other monies belonging to the estate of the said testator, and paid into the said high court of chancery, be laid out in the purchase of stock in the three per cent. consolidated bank annuities, in the name of the said accountant general of such last mentioned court, in trust, in the said cause; and that the said defendants, Henry Hugh Hoare, Charles Hoare, Henry Merrick Hoare, might be restrained from paying and delivering the monies, securities, and effects, of the said testator in their hands to this defendant, or the said Samuel Williams and John Sterling; and that the said Henry Hugh Hoare, Charles Hoare, and Henry Merrick Hoare, might be ordered to pay the said money of the said testator in their hands, into the said court of chancery, and that the said defendants, Samuel Williams and John Sterling, might be restrained, by the injunction of the said court, from remitting any part of the estate or effects of the said testator in England to this defendant, and that some proper person might be appointed by the said high court of

chancery to receive and get in all the personal estate and effects of the said testator, and for further relief.

That, by an order of the said high court of chancery, bearing date the 9th day of August, 1825, such injunction to restrain the sale and transfer of the said funds, and stocks, and the receipt of the dividends thereof, as in the said plea was afterwards mentioned to have been dissolved, was granted; and that, by an order dated the 31st day of July, 1826, made in the said cause in the said high court of chancery, certain monies, part of the estate of the said Mathias Aspden, were ordered to be paid into court, and the same were accordingly paid into court. That this defendant, and the other defendants in the said bill of complaint in the high court of chancery, except the said Esther Hartley, who was out of the jurisdiction, put in their respective answers to the said bill of complaint of the said John; and this defendant, by his said answer stated, amongst other things, that he believed that Mathias Aspden, the testator in the said bill named, was born on or about the year 1756, at Philadelphia, in North America, being the place of residence of his parents; that he continued to reside, and was afterwards engaged in business at Philadelphia as a merchant with some success, before he was 21 years of age; and that, upon the breaking out of the war between Great Britain and America, in the year 1776, or some time in that year, being still a minor, he went to England, with what view this defendant was not able from his own knowledge to say, but he believed he went with an impression that the power of England must soon prevail in putting down the resistance made in America, and that the said testator subsequently came several times to the United States of America, and invested large sums there in the public or Government stocks, and other securities, and that he made his will, and the codicils thereto, at Philadelphia, the place of his birth, and deposited them in the bank there; but whether, after so returning to the United States of America, the said testator went back to England as his home, or only for the purpose of superintending his property there; whether the said testator did in fact change his domicil this defendant did not know, and was unable to answer from his belief or otherwise, but that this defendant believed that the said testator, when in England, considered himself an alien, and as such claimed to have returned the tax from his dividends while he was absent from England, according to the provisions of the act exempting aliens from tax if not resident in England. That the said John Aspden, the complainant in the said cause in the said high court of chancery, having departed this life, whereby the said suit in said court became abated, the said complainants, Jennet, otherwise Janet Jones, and Thomas Poole and Mary his wife, on or about the 18th day of March, 1828, exhibited their bill of revivor in the said high court of chancery, against this defendant and the other defendants in the said original and amended bill in the said high court of chancery, thereby stating the said

proceedings in the said original cause, and the death of the said complainant John Aspden, intestate, leaving the said complainants, Janet Jones [and] Mary Poole, his only children and next of kin; and that the said Janet Jones and Mary Poole had obtained letters of administration of the goods, chattels, debts, and credits, of the said intestate to be granted to them out of the prerogative court of the Archbishop of Canterbury, and thereby praying that the said suit and proceedings which so became abated as therein mentioned, might stand revived, and be in the same plight and condition as the same were in at the time of the death of the said John Aspden; that the said suit was afterwards duly revived, and the cause being at issue came on to be heard before his honor the chancellor of England, on the 17th day of July, 1830, when his honor was pleased to order and decree that the injunction awarded in the original cause of Aspden against Nixon, pursuant to an order made in the said cause, bearing date the 9th day of August, 1825, to restrain the defendants, Samuel Williams and John Sterling, from selling or transferring £4,000 bank stock, £10,000 three pound per cent. consolidated bank annuities, £6,500 £3 10 per cent. reduced annuities, and £6,000 bank four pound per cent. annuities not assented to, (the said £6,500 and £6,000 in the said injunction stated by mistake as £12,500 reduced £3 10 per cent. annuities,) and £3,500 new £4 per cent. annuities; and the said last named defendants to be restrained from selling or transferring the said £3,000 East India stock and £5,000 South Sea stock; and that the said defendants, Samuel Williams and John Sterling, should be in like manner restrained from receiving any dividends due, or to become due, on the said bank annuities and stocks respectively, save and except the dividends then already due on the said East India and South Sea stocks; and that the said defendants, the Governor and Company of the Bank of England, should also be restrained from making, or permitting to be made, any transfer or sale of the said bank annuities and stocks, and from paying any dividends thereon; and that the said defendants, the East India Company, should be in like manner restrained from making, or permitting to be made, any sale or transfer of the £3,000 East India stock; and that the said defendants, the South Sea Company, should be in like manner restrained from making, or permitting to be made, any transfer or sale of the £5,000 stock; and that the said defendants, the East India Company and the South Sea Company, should be also, in like manner, restrained from paying any future dividends to accrue due upon the said East India Company and South Sea stock respectively, until the defendants should fully answer the said bill, or the said court should make other order to the contrary, should be dissolved, and that the sum of £228 8 11 cash in the bank, placed to the credit of the cause of Aspden and Nixon, should be paid to the defendant Henry Nixon; and, for the purpose aforesaid, the accountant general of the said court was to draw on the bank, accord-

ing to the form prescribed by the act of Parliament, and the general rules and orders of the court in that case made and provided, and that the said complainants' said bill should stand dismissed out of the said court, with costs, to be taxed by the master of the said court in rotation; that the said decree had been since duly signed and enrolled, and that this defendant did aver that the said suit, in the said high court of chancery so as aforesaid revived and brought to hearing by the said complainants, Jennett Jones, otherwise Janet Jones, and Thomas Poole and Mary his wife, against this defendant and the said other defendants thereto, was for the same matters, and to the same effect, and for the like relief and purposes, as against this defendant; and the said other defendants thereto being also defendants to the said complainants' bill of complaint in the said court of exchequer, as the said complainants did by their said bill of complaint in the said court of exchequer set forth, and seek relief for, as against this defendant and the said other defendants to the said bill of complaint in the said court of exchequer; and therefore this defendant did plead the said decree of the said high court of chancery, signed and enrolled as aforesaid, in bar to the said complainant's said bill of complaint in the said court of exchequer, and humbly prayed the judgment of the said court, whether he should be compelled to make any further or other answer thereto, and prayed to be thence dismissed, with his reasonable costs in that behalf wrongfully sustained.

And this defendant further saith, that this cause, being at issue, came on to be heard before the said court of exchequer, on the 4th day of July, 1831, when the said court was pleased to order and decree that the said plea, so as aforesaid pleaded by this defendant in bar of the said complainant's bill of complaint in the said court should be allowed, and that the said complainant's said bill of complaint should stand dismissed out of the said court.

And this defendant further saith, that the said decree of the said court of exchequer has been duly signed and enrolled; and this defendant doth aver that the said suit in the said court of exchequer, so as aforesaid brought to a hearing by the said complainants, Jennett Jones, otherwise Janet Jones, and Thomas Poole and Mary his wife, administrators of the said John Aspden, against this defendant and the said other defendants thereto, was for the same matters, and to the same effect, and for the like relief and purposes, as against this defendant; the said complainants or petitioners, by their said present bill of complaint or petition in this honorable court, sets forth, and seeks relief for, as administrator of the said John Aspden, upon whose estate this defendant avers administration was claimed and granted to the said complainant or petitioner as the attorney in fact of the children, and next of kin and administrators of the said John Aspden in England, and as ancillary to the administration there, and for no other end or purpose whatsoever.

(And this defendant also avers that the said Mathias Aspden, at the time of the making of his said last will and testament, and at the time of his death, and during the whole intermediate period between the making of the said last will and testament and his death, was domiciled in London, or elsewhere in England.) [Struck out under the order of the court to amend, Dec. 28th, 1835.]

And therefore this defendant doth plead the said decree of the said court of exchequer, signed and enrolled as aforesaid, in bar to the said complainant's present bill of complaint or petition in this honorable court, and prays the judgment of this honorable court, whether he shall be compelled to make any further or other answer thereto. And this defendant prays to be hence dismissed, so far as relates to the said bill of complaint or petition, with his reasonable costs in this behalf wrongfully sustained.

J. R. INGERSOLL, *for def.*

Henry Nixon, the defendant in the annexed plea named, being duly sworn according to law, says: that the said plea is true to the best of his knowledge, judgment and belief; that he has seen certain papers purporting to be copies of the bill of complaint and other proceedings in the court of exchequer, in England, stated in the said plea, which he believes to be true and genuine, and he firmly believes that the proceedings took place as they are set forth in the said plea. He also believes, that the said bill and proceedings were for the same matters and to the same effect, and for the like relief and purposes, as the said bill in chancery, revived by the complainants, Jennet Jones and Mary Poole, and that the bills filed in the exchequer and in chancery in England, are for the same matters and to the same effect, and for the like relief and purpose, as the bill and petition in this court by the said Jennet Jones and Mary Poole. The defendant further says, that a certain petition was filed on or about the fifteenth day of June, 1835, in the circuit court of the United States, for the eastern district of Pennsylvania, in behalf of Jennet Jones, otherwise Jenet Jones, widow of David Jones, deceased, and Mary Poole, widow of Thomas Poole, deceased, whereby it is stated and made to appear, that they, the said petitioners, are the daughters and only children of John Aspden, late of Old street, in the city of London, and whereby, also, it appears, that Thomas Poole is dead; and the defendant believes, that they, the said Jennet Jones and Mary Poole, are the same persons by whom the bills of complaint and revivor in chancery, and bill in the exchequer, were filed.

H. NIXON.

Sworn and subscribed, this thirteenth day of June, 1836, in open circuit court.

FRA. HOPKINSON, *Cl'k circ't ct.*

PACKER, vs. NIXON.

In the matter of the pleas in bar to the petitions of Jennett Jones and Mary Poole, daughters of John Aspden, late of London, deceased, and of John A. Brown, administrator of the said John Aspden:

The court do adjudge and decree, that said pleas in bar are sufficient in law to bar the claims of the aforesaid petitioners, reserving to themselves, nevertheless, the right of ordering, adjudging, or decreeing otherwise, as shall hereafter appear to them to appertain to justice and equity; reserving also to the aforesaid petitioners liberty to move for a re-hearing on the said pleas, on the return of the commission hereafter directed. The court doth order that the aforesaid petitioners reply to the said pleas generally or specially, with leave of the court on special matter shewn, which replication shall be without prejudice, and when put in and issue taken thereon by the defendant Nixon, which joining of issue shall also be without prejudice—

It is further ordered, that a commission issue to London, to take testimony touching the several matters of the said pleas on behalf of said defendant.

That said defendant be directed *be directed* to file such interrogatories as may be furnished to him by any of the parties or petitioners in the cases touching the matters of the said pleas, excepting the petitioners before named, but they to have leave to file cross interrogatories, on any matter to which any interrogatories relate, or interrogatories as to any matter in special replication.

Each party, or petitioner, reserves all objections to the competency or relevancy of any interrogatory, the answer thereto, or any papers appended to such commission.

The court reserves the right of making such order in the premises, (to be entered nunc pro tunc) at the next term, as shall appear to them ought to be done, according to the law and course of equity therein.

The domicil of testator, or the relation between him and any of the parties or petitioners, is not a matter in issue on said pleas.

In the circuit court of the United States for the third circuit.

PACKER vs. NIXON. } April Ses. 1828.—In equity.

The replication of John A. Brown, administrator to the estate of John Aspden, late of Old street, London, deceased, one of the complainants to the plea of Henry Nixon, executor of the last will and testament of Mathias Aspden, deceased, defendant.

This repliant, saving and reserving to himself all and all man-

ner of advantage and exception to the manifold insufficiencies of the said plea, (and in accordance with the order of the said court, made on the day of January last, and by leave thereof, without prejudice to the said repliant,) for and by way of replication saith, that his original bill or petition, exhibited against the said Henry Nixon, the defendant, and all and every the matters therein contained, are true, certain, and sufficient in law to be answered unto; and that the plea of the said defendant is untrue, uncertain, and insufficient in the law to be replied unto by this repliant.

Save and except only that this repliant admits, that on or about the thirtieth day of July, A. D. eighteen hundred and twenty-five, a bill was filed in the high court of chancery, in that part of the United Kingdom of Great Britain and Ireland called England, wherein John Aspden, then of the city of London, since deceased, was complainant, and the said Henry Nixon, executor of the will and codicils of Mathias Aspden, deceased, Samuel Williams, John Sterling, and others, were defendants, the said Henry being then, and at all times thereafter, resident in, and a citizen of, the United States of America, and out of the jurisdiction of the said court; in which said bill of complaint it was, among other things, stated that the said Mathias Aspden died in the city of London, possessed of considerable property in the English, French, and American funds, and other personal estate; and also, after setting forth the contents of the said will, and the three codicils thereof, of the said Mathias Aspden, that the said testator departed this life without issue, and without any brother or sister of the whole blood, him surviving, but leaving half brothers and sisters, and descendants of half brothers and sisters, on the mother's side, and descendants of a half sister on the father's side, but which half sister was illegitimate, him surviving. And also that, at the time of the death of the said testator, the said Henry Nixon was president of the Old bank at Philadelphia; that he proved the said will and codicils in the proper office at Philadelphia, and also in the prerogative court of Canterbury, in England, and that the said testator left John Aspden, the complainant, his heir at law. And it was further in the said bill of complaint stated, that Thomas Aspden, of Simondstone, in Lancashire, was the common ancestor of the said testator and the said John Aspden, the complainant, and that Mathias Aspden, the father of the testator, was the third son of the said Thomas Aspden, the common ancestor, who had twelve children; and that the said Mathias Aspden, the father, being resident in America, married there an American woman, and that the said Mathias Aspden had issue by her, after said marriage, an only child, the said testator; and that the said Mathias Aspden, the father, died in or about the year seventeen hundred [and] sixty-five, in Philadelphia, leaving the said testator, his only lawful issue, him surviving; and further, among other things, that there were certain persons in America who claimed to be the heirs at law, and next of kin, of the

testator, according to the laws of Pennsylvania, and, as such, entitled to his whole estate; (and) it was prayed by and in the said bill of complaint, that an account might be taken of the personal estate of the testator in England, and the residue ascertained, and that the said complainant might be declared by the said court to be entitled, upon the true construction of the said will and codicils, as the heir at law of the testator, to such residue, and in the mean time, that the said defendant, Henry Nixon, and Samuel Williams and John Sterling, the constituted attorneys of the said Henry Nixon, also defendants, might be restrained, by injunction, from receiving any part of the personal estate of the said testator in England, and particularly from selling or transferring several stocks and securities, in the said bill of complaint particularly mentioned and set forth, and from receiving, transferring, or disposing of certain moneys and effects, in the hands and possession of certain other persons, also named as defendants in the said bill of complaint.

And this repliant further answering, saith, that he admits an injunction was issued, pursuant to the prayer of the above recited bill of complaint, and that the said Henry Nixon, being still without the jurisdiction of the said court, caused his answer to the said bill of complaint to be filed in the said court of chancery, on or about the twentieth day of July, anno domini eighteen hundred and twenty-six, wherein, among other things, he stated, that he did not know, and was unable to say, from his belief or otherwise, whether said testator left said John Aspden, the complainant, his heir at law, or whether Thomas Aspden, of Simondstone, was the common ancestor of the testator, and the said complainant. And the said defendant, in his said answer, also, among other things, stated that he believed it to be true, that the name of the father of the said testator was Mathias Aspden, and that the said Mathias Aspden, the father, was resident in America, and while there, married Rebecca Hartley, a native of America, who was the widow of Roger Hartley, and the daughter of Philip and Rebecca Packer, both residents of North America; and that Mathias, the father, had issue by her, after his marriage as aforesaid, an only child, the said testator. And said defendant also stated, in his said answer, that he had heard it mentioned, that the said Mathias Aspden married the said Rebecca Hartley, while she was pregnant with the testator, and he believed the said Rebecca Hartley had several children by her former husband, Roger Hartley, none of whom were then living, but that some of them had left children, who were then in full life. And the said defendant further stated, that he believed the said Mathias Aspden, the testator's father, had a former wife, named Mary Watson, the daughter of Jonathan Watson, of Cleviger, in Lancashire, by whom he had issue, a daughter, named Mary, who intermarried with Henry Harrison, of Philadelphia, who is deceased, leaving several children, one of whom, named George Har-

rison, was then living in the city of Philadelphia. And that there were many persons in the United States of America who claimed to be next of kin to the said testator, and as such entitled to the said personal estate of the said testator, under his said will and codicils.

And the said defendant further stated in his said answer, that he intended to apply the personal estate of the said testator in such manner as should be determined by a court of competent jurisdiction in the said United States of America.

And this repliant further saith, that, on or about the month of July, in the year eighteen hundred aud twenty-seven, an amended bill was filed by the said John Aspden; and that the said John Aspden died on or about the twenty-second day of February, A. D. eighteen hundred and twenty-eight; whereupon the said suit became abated; and that, on or about the eighteenth day of March, A. D. eighteen hundred and twenty-eight, Jannet Jones and Thomas Poole and Mary his wife, administrator and administratrixes of the estate of the said John Aspden, of London, deceased, filed their bill of revivor in the said court of chancery against the said defendants. The said Jennet and Mary having first obtained letters of administration from the said prerogative court of Canterbury to the estate of the said John Aspden, deceased.

And the said Henry Nixon, being out of the jurisdiction of the said court, put in his answer to the said amended bill, stating therein as he had before stated in his answer to the said original bill of the said John Aspden, deceased.

And this repliant further saith, that the said John Aspden, of London, had been for a long time before his death in a state of mental imbecility, and in great poverty, and at his decease left his two daughters, the said Jennet Jones and Mary Poole, and Thomas Poole, the husband of the said Mary, all in extreme poverty, and utterly unable, from their own resources or from the estate of the said John Aspden, to provide or procure the means for prosecuting and carrying on the said suit in the said court of chancery. And also, that Thomas Gregson, who had been the attorney of the said John Aspden in his lifetime, and was, after his death, the attorney of the said Jennet and Mary, and Thomas, having been for a long time previous in infirm health, also departed this life some time in the year eighteen hundred and thirty.

And this repliant further saith, that, in consequence of the poverty and imbecility of the said John Aspden during his life, and the poverty of his two daughters, the said Jennet and Mary, and of the said Thomas Poole, the husband of the said Mary, and of the continued illness and death of the said Thomas Gregson, their said attorney, they, the said Jennet, Thomas and Mary, were utterly unable to prosecute and carry on the said suit in the said court of chancery, and the same was not so prosecuted and carried on, and no evidence whatever was taken, nor witnesses examined, nor proof in any way entered into in the said suit.

And this repliant further replying, admits that afterwards, the said bill of complaint of the said John Aspden, of London, and the bill of revivor of the said Jenet and Mary and Thomas, as administrators of the said John Aspden, was dismissed out of the said court of chancery, in or about the year eighteen hundred and thirty, for want of due prosecution, and because no evidence had been taken in the said cause, and without any hearing, debate, or argument upon the merits of the claims stated in the said original bill and bill of revivor, and without any decision, examination, or determination of the said court of the title of the said John Aspden, and the said Jennet, Mary, and Thomas, to the relief prayed for by them. And that, by the dismissal of the said bills, the personal estate of the said testator, Mathias Aspden, then in Great Britain, and under the control of the said high court of chancery, was delivered unto the said Henry Nixon, as executor of the said Mathias, to be applied by him according to the decision of some court of competent jurisdiction in the United States of America, and to be paid over, after deducting proper charges and allowances, to such person or persons as, in such court, should establish their claim thereto, as heirs-at-law to the said testator under the provisions of his said will and codicils, and for no other purpose whatever.

And this repliant further saith that afterwards, on or about the month of August, A. D. eighteen hundred and thirty, the said Jennet, otherwise Janet Jones, and Thomas Poole and Mary his wife, caused their bill of complaint to be filed in the court of exchequer, in that part of the united kingdom of Great Britain and Ireland called England, wherein the said Jennet, otherwise Janet Jones, and Thomas Poole and Mary his wife, were complainants; and the said Henry Nixon, who was then and always continued to be out of the jurisdiction of the said court of exchequer, Henry Hugh Hoare, and Charles Hoare, and Henry Merrick Hoare, and others, were defendants, which said bill of complaint charged and stated in substance, as had been before charged and stated in the said original and amended bills and bill of revivor, filed as aforesaid in the said court of chancery, by the said John Aspden, and Jennet, Mary and Thomas, and to this said bill of complaint, so filed as aforesaid in the said court of exchequer; the said Henry Nixon (being out of the jurisdiction of the said court) filed his plea in bar, setting forth, as before set forth by him in his answers to the said original and amended bills in the high court of chancery, and alleging that the said suit in the court of chancery was for the same matters, and to the same purpose, and for the like relief, as the said suit in the court of exchequer. And therefore the said Henry Nixon, the defendant, did plead the said dismissal of the said suit by the high court of chancery in bar to the bill of complaint in the said court of the exchequer. And this repliant admits that the said plea in bar, so filed by the said Henry Nixon, was allowed by the said court of exchequer.

And the said repliant, further replying, saith, that the said plea was allowed upon the ground of want of jurisdiction in the said court of exchequer to entertain a bill of complaint in relation to the same matters, of which the said court of chancery had previously taken cognisance, although the said bill had been dismissed by the said court of chancery for want of prosecution. And because, also, according to the special practice, rules, and regulations of the said court of exchequer, that court would not and could not sustain a bill of complaint of the same matter of which the said court of chancery had previously entertained jurisdiction, and because the suit in the said court of exchequer was *considered* in the nature of an appeal from the decree of the said court of chancery, and such proceeding could not be supported, as the said courts were courts of concurrent jurisdiction. And the said court of chancery, having first entertained the suit in relation to the premises, obtained exclusive jurisdiction, so far as respected the said court of exchequer, of the subject matters of the said bills of complaint. And that the said plea in the exchequer was allowed without any hearing, debate, or argument, upon the merits of the said claim of the said Jennet, otherwise Janet Jones, and Mary and Thomas Poole, and without any examination, decision, and determination whatever of the title of said complainants to the relief sought by their said bill of complaint.

And that, upon the allowance of his plea in bar, the said personal estate of the testator in England, and under the control of the said court of exchequer, was delivered unto the said Henry Nixon, to be applied by him according to the prayer of his answer in the high court of chancery in England, in such manner as should be decided by a court of competent jurisdiction in the United States of America, and paid over to such person or persons as should establish their claim thereto in such court, as heirs-at-law of the testator (first deducting all proper charges and allowances) under the provisions of his said will and codicils.

Without that, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and herein not replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall award, and humbly prays, as in and by his said bill or petition he hath already prayed.

H J. WILLIAMS,
Solicitor for repliant.

In the circuit court of the United States, for the third circuit, April session, 1828.

PACKER, vs. NIXON. } In equity.

The replication of John A. Brown, administrator to the estate of John Aspden, late of Old street, London, deceased, one of the complainants to the plea of Henry Nixon, executor of the last will and testament of Mathias Aspden, deceased, defendant.

This repliant, saving and reserving to himself all and all manner of advantage and exception to the manifold insufficiencies of said plea, (and in accordance with the order of the said court, made on the day of January last, and by leave thereof, without prejudice to the said repliant,) for, and by way of replication, saith, that his original bill or petition, exhibited against the said Henry Nixon, the defendant, and all and every the matters, &c., therein contained, are true, certain, and sufficient in law to be answered unto, and that the plea of the said defendant is untrue, uncertain, and insufficient in the law to be replied unto by this repliant, save and except only, that this repliant admits, that on or about the thirtieth day of July, A. D. eighteen hundred and twenty-five, a bill was filed in the high court of chancery, in that part of the united kingdom of Great Britain and Ireland called England, wherein John Aspden, then of the city of London, since deceased, was complainant, and the said Henry Nixon, executor of the will and codicils of Mathias Aspden, deceased, Samuel Williams, John Sterling, and others, were defendants, the said Henry being then, and at all times thereafter, resident in, and a citizen of, the United States of America, and out of the jurisdiction of the said court; in which said bill of complaint it was, among other things, stated, that the said Mathias Aspden died in the city of London, possessed of considerable property in the English, French, and American funds, and other personal estate; and, also, after setting forth the contents of the said will, and the three codicils thereof, of the said Mathias Aspden, that the said testator departed this life without issue, and without any brother or sister, of the whole blood, him surviving, but leaving half brothers and sisters, and descendants of half brothers and sisters, on the mother's side, and descendants of a half sister on the father's side, but which half sister was illegitimate, him surviving; and also, that at the time of the death of the said testator, the said Henry Nixon was president of the Old bank at Philadelphia; that he proved the said will and codicils at the proper office at Philadelphia, and also in the prerogative court of Canterbury, in England, and that the said testator left the said John Aspden, the complainant, his heir-at-law.

And it was further, in the said bill of complaint, stated, that Thomas Aspden, of Simondstone, in Lancashire, was the common

And the said repliant, further replying, saith, that the said plea was allowed upon the ground of want of jurisdiction in the said court of exchequer to entertain a bill of complaint in relation to the same matters, of which the said court of chancery had previously taken cognisance, although the said bill had been dismissed by the said court of chancery for want of prosecution. And because, also, according to the special practice, rules, and regulations of the said court of exchequer, that court would not and could not sustain a bill of complaint of the same matter of which the said court of chancery had previously entertained jurisdiction, and because the suit in the said court of exchequer was *considered* in the nature of an appeal from the decree of the said court of chancery, and such proceeding could not be supported, as the said courts were courts of concurrent jurisdiction. And the said court of chancery, having first entertained the suit in relation to the premises, obtained exclusive jurisdiction, so far as respected the said court of exchequer, of the subject matters of the said bills of complaint. And that the said plea in the exchequer was allowed without any hearing, debate, or argument, upon the merits of the said claim of the said Jennet, otherwise Janet Jones, and Mary and Thomas Poole, and without any examination, decision, and determination whatever of the title of said complainants to the relief sought by their said bill of complaint.

And that, upon the allowance of his plea in bar, the said personal estate of the testator in England, and under the control of the said court of exchequer, was delivered unto the said Henry Nixon, to be applied by him according to the prayer of his answer in the high court of chancery in England, in such manner as should be decided by a court of competent jurisdiction in the United States of America, and paid over to such person or persons as should establish their claim thereto in such court, as heirs-at-law of the testator (first deducting all proper charges and allowances) under the provisions of his said will and codicils.

Without that, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and herein not replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall award, and humbly prays, as in and by his said bill or petition he hath already prayed.

H J. WILLIAMS,
Solicitor for repliant.

In the circuit court of the United States, for the third circuit, April session, 1828.

PACKER, vs. NIXON. } In equity.

The replication of John A. Brown, administrator to the estate of John Aspden, late of Old street, London, deceased, one of the complainants to the plea of Henry Nixon, executor of the last will and testament of Mathias Aspden, deceased, defendant.

This repliant, saving and reserving to himself all and all manner of advantage and exception to the manifold insufficiencies of said plea, (and in accordance with the order of the said court, made on the day of January last, and by leave thereof, without prejudice to the said repliant,) for, and by way of replication, saith, that his original bill or petition, exhibited against the said Henry Nixon, the defendant, and all and every the matters, &c., therein contained, are true, certain, and sufficient in law to be answered unto, and that the plea of the said defendant is untrue, uncertain, and insufficient in the law to be replied unto by this repliant, save and except only, that this repliant admits, that on or about the thirtieth day of July, A. D. eighteen hundred and twenty-five, a bill was filed in the high court of chancery, in that part of the united kingdom of Great Britain and Ireland called England, wherein John Aspden, then of the city of London, since deceased, was complainant, and the said Henry Nixon, executor of the will and codicils of Mathias Aspden, deceased, Samuel Williams, John Sterling, and others, were defendants, the said Henry being then, and at all times thereafter, resident in, and a citizen of, the United States of America, and out of the jurisdiction of the said court; in which said bill of complaint it was, among other things, stated, that the said Mathias Aspden died in the city of London, possessed of considerable property in the English, French, and American funds, and other personal estate; and, also, after setting forth the contents of the said will, and the three codicils thereof, of the said Mathias Aspden, that the said testator departed this life without issue, and without any brother or sister, of the whole blood, him surviving, but leaving half brothers and sisters, and descendants of half brothers and sisters, on the mother's side, and descendants of a half sister on the father's side, but which half sister was illegitimate, him surviving; and also, that at the time of the death of the said testator, the said Henry Nixon was president of the Old bank at Philadelphia; that he proved the said will and codicils at the proper office at Philadelphia, and also in the prerogative court of Canterbury, in England, and that the said testator left the said John Aspden, the complainant, his heir-at-law.

And it was further, in the said bill of complaint, stated, that Thomas Aspden, of Simondstone, in Lancashire, was the common

ancestor of the testator, and the said John Aspden, the complainant; and that Mathias Aspden, the farther of the testator, was the third son of the said Thomas Aspden, the common ancestor, who had twelve children; and that the said Mathias Aspden, the father, being resident in America, married there an American woman; and that the said Mathias Aspden had issue by her, after said marriage, an only child, the said testator; and that the said Mathias Aspden, the father, died in or about the year seventeen hundred [and] sixty-five, in Philadelphia, leaving the said testator his only lawful issue, him surviving. And further, among other things, that there were certain persons in America who claimed to be the heirs-at-law and next of kin of the testator, according to the laws of Pennsylvania, and as such entitled to his whole estate; and it was prayed, by and in the said bill of complaint, that an account might be taken of the personal estate of the testator in England, and the residue ascertained, and that the said complainant might be declared by the said court to be entitled, upon the true construction of the said will and codicils, as the heir-at-law of the testator, to such residue; and, in the mean time, that the said defendants Henry Nixon, and Samuel Williams, and John Sterling, the constituted attorneys of the said Henry Nixon, also defendants, might be restrained, by injunction, from receiving any part of the personal estate of the said testator in England, and particularly from selling or transferring several stocks and securities in the said bill of complaint particularly mentioned and set forth, and from receiving, transferring, or disposing of certain moneys and effects in the hands and possession of certain other persons, also named as defendants in the said bill of complaint.

And this repliant further answering saith, that he admits an injunction was issued, pursuant to the prayer of the above recited bill of complaint, and that the said Henry Nixon being still without the jurisdiction of the said court, caused his answer to the said bill of complaint to be filed in the said court of chancery, on or about the twentieth day of July, anno domini eighteen hundred and twenty-six, wherein, among other things, he stated, that he did not know, and was unable to say, from his belief or otherwise, whether said testator left the said John Aspden, the complainant, his heir-at-law, or whether Thomas Aspden, of Simondstone, was the common ancestor of the testator and the said complainant. And the said defendant, in his said answer, also, among other things, stated, that he believed it to be true that the name of the father of the said testator was Mathias Aspden, and that the said Mathias Aspden, the father, was resident in America, and while there married Rebecca Hartley, a native of America, who was the widow of Rodger Hartley, and the daughter of Philip and Rebecca Packer, both residents of North America; and that Mathias, the father, had issue of her, after his marriage as aforesaid, an only child, the said testator. And said defendant also stated, in his said answer, that he

had heard it mentioned, that the said Mathias Aspden married the said Rebecca Hartley while she was pregnant with the testator, and he believed the said Rebecca Hartley had several children by her former husband, Roger Hartley, none of whom were then living, but that some of them had left children who were then in full life.

And the said defendant further stated, that he believed the said Mathias Aspden, the testator's father, had a former wife, named Mary Watson, the daughter of Jonathan Watson, of Cleviger, in Lancashire, by whom he had issue a daughter, named Mary, who intermarried with Henry Harrison, of Philadelphia, who is deceased, leaving several children, one of whom, named George Harrison, was then living in the city of Philadelphia; and that there were many persons in the United States of America, who claimed to be next of kin to the said testator, and as such entitled to the said personal estate of the said testator, under his said will and codicils.

And the said defendant further stated in his said answer, that he intended to apply the personal estate of the said testator, in such manner as should be determined by a court of competent jurisdiction in the said United States of America.

And this repliant further saith, that on or about the month of July, in the year eighteen hundred and twenty-seven, an amended bill was filed by the said John Aspden, and that the said John Aspden died on or about the twenty-second day of February, A. D. eighteen hundred and twenty-eight, whereupon the said suit became abated; and that, on or about the eighteenth day of March, A. D. eighteen hundred and twenty-eight, Jennet Jones and Thomas Poole and Mary his wife, the said Jennet and Mary and Thomas being the administrator and administratrixes of the estate of the said John Aspden, of London, deceased, filed their bill of revivor in the said court of chancery against the said defendants, (the said Jennet and Mary having first obtained letters of administration from the said prerogative court of Canterbury to the said estate of the said John Aspden, deceased;) and the said Henry Nixon, being out of the jurisdiction of the said court, put in his answer to the said amended bill, stating therein as he has before stated in his answer to the said original bill of the said John Aspden, deceased.

And this repliant further saith, that the said John Aspden, of London, had been, for a long time before his death, in a state of mental imbecility and in great proverty, and at his decease left his two daughters, the said *said* Jennet Jones and Mary Poole, and Thomas Poole, the husband of the said Mary, all in extreme proverty, and utterly unable from their own resources, or from the estate of their said father, to provide, or procure the means for prosecuting and carrying on the said suit in the said court of chancery; and also, that Thomas Gregson, who had been the attorney of the said John Aspden in his lifetime, and was after his death the attorney of the said Jennet, Mary, and Thomas, having been for a long time previous in very infirm health, also departed this life some time in the year eighteen hundred and thirty.

And this repliant further saith, that in consequence of the poverty and imbecility of the said John Aspden during his life, and the poverty of his two daughters, the said Jennet and Mary, and of the said Thomas Poole, the husband of the said Mary, and of the continued illness and death of the said Thomas Gregson, their said attorney, they, the said Jennet and Thomas and Mary, were utterly unable to prosecute and carry on the said suit in the said court of chancery; and the same was not prosecuted and carried on, and no evidence whatever was taken, nor witnesses examined, nor proof in any way entered into in the said suit.

And this repliant further replying, admits, that afterwards, the said bill of complaint of the said John Aspden, of London, and the bill of revivor of the said Jennet, Mary, and Thomas, as administrators of the said John Aspden, was dismissed out of the said court of chancery, in or about the month of July, in the year eighteen hundred and thirty, for want of due prosecution, and because no evidence had been taken in the said cause, and without any hearing, debate, or argument upon the merits of the claims stated in the said original bill and bill of revivor, and without any decision, examination, or determination, by the said court, of the title of the said John Aspden, and the said Jennet, Mary, and Thomas, to the relief prayed for by them; and that by the dismissal of the said bills the personal estate of the said testator, Mathias Aspden, then in Great Britain, and under the control of the said high court of chancery, was delivered unto the said Henry Nixon, as executor of the said Mathias Aspden, to be applied by him according to the decision of some court of competent jurisdiction in the United States of America, and to be paid over, after deducting proper charges and allowances, to such person or persons as in such court should establish their claim thereto as heirs at law of the said testator, under the provisions of his said will and codicils, and for no other purpose whatsoever; without that there is any other matter or thing in the said defendant's plea contained, material or effectual for this repliant to reply unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things, save and except as aforesaid, this repliant is ready to aver and prove as this court shall award, and prays as in and by his said original bill or petition he hath prayed.

HENRY J. WILLIAMS, *Solicitor.*

In the circuit court of the United States, for the third circuit.

PACKER vs. NIXON } April session, 1828, in equity.

The replication of Jennet, otherwise Janet Jones, widow of David Jones, deceased, and Mary Poole, widow of Thomas Poole, deceased, to the plea of Henry Nixon, executor of the will of Mathias Aspden, deceased, defendant.

These repliants, saving and reserving to themselves all and all

manner of advantage and exception to the manifold insufficiencies of said plea, and without prejudice (according to the order of the said court, made on the day of January last past) for and by way of replication, say, that their original bill or petition exhibited against the said defendant, and all and every the matters, &c., therein contained, are true, certain, and sufficient in the law to be answered unto, and that the plea of the defendant is untrue, uncertain, and insufficient in the law to be replied unto by these repliants; save and except only, that, on or about the thirtieth day of July, anno domini eighteen hundred and twenty-five, a bill was filed in the high court of chancery, in that part of the United Kingdom of Great Britain and Ireland called England, wherein John Aspden, then of the city of London, since deceased, the father of these repliants, was complainant, and the said Henry Nixon, executor of the will and codicils of Mathias Aspden, deceased, Samuel Williams and John Sterling, and others, were defendants; the said Henry being then, and at all times thereafter, a citizen of, and resident in the United States of America, and out of the jurisdiction of said court; whereon, after stating among other things, the death of the said Mathias Aspden, in the city of London, possessed of considerable property in the English, French, and American funds, and of other personal estate, and after setting forth the contents of the will and three codicils thereto of the said Mathias Aspden, and also stating that the said testator departed this life without issue, and without any brother or sister of the whole blood him surviving, but leaving half brothers and sisters, and descendants of half brothers and sisters, on the mother's side, and descendants of a half sister on the father's side, but which half sister was illegimate, him surviving; and stating that, at the time of the death of the said testator, the said Henry Nixon was president of the Old bank at Philadelphia, and that he proved said will and codicils in the proper office in Philadelphia, and in the prerogative court of Canterbury; and also, that the said testator left the said John Aspden, the complainant, his heir at law; and further stating, that Thomas Aspden, of Simondstone, in Lancashire, was the common ancestor of the testator, and the said John Aspden, the complainant. And that Mathias Aspden, the father of the testator, was the third son of the said Thomas Aspden, the common ancestor, who had twelve children; and that the said Mathias Aspden, the father, being resident in America, married there an American woman, and that the said Mathias Aspden had issue by her, after said marriage, an only child, the said testator; and that the said Mathias Aspden, the father, died in or about the year seventeen hundred and sixty-five, in Philadelphia, leaving the said testator, his only lawful issue, him surviving; and also stating among other things, that there were certain persons in America, who claimed to be the heirs at law and next of kin to the testator, according to the laws of Pennsylvania, and as such entitled to his whole estate, and praying that an account might be taken of

the personal estate of the said testator in England, and the residue ascertained; and that the said complainant might be declared by the court to be entitled, upon the true construction of the will and codicils, as the heir at law of the said testator to such residue; and that in the mean time, the said defendant, Henry Nixon, and Samuel Williams and John Sterling, the constituted attorneys of the said Henry Nixon, also defendants, might be restrained by injunction from receiving any part of the personal estate of the said testator in England, and particularly from selling or transferring several stocks and securities in the said bill particularly mentioned and set forth, and certain moneys and effects in the hands of other persons also named as defendants to the said bill of complaint.

And these repliants admit, that an injunction was issued pursuant to the prayer of the above recited bill of complaint; and these repliants further say, that the said Henry Nixon, being out of the jurisdiction of the said court, caused his answer to the said bill of complaint to be filed in the said court of chancery, on or about the twentieth day of July, anno domini eighteen hundred and twenty-six, wherein he stated, among other things, that he did not know, and was unable to say from his belief or otherwise, whether said testator left the said John Aspden, the complainant, his heir at law, or whether Thomas Aspden, of Simondstone, was the common ancestor of the testator and the petitioner. And the said defendant in his said answer also stated, that he believed it to be true that the name of the father of the said testator was Mathias Aspden, and that the said Mathias Aspden, the father, was resident in America, and while there married Rebecca Hartley, a native of America, who was the widow of Rodger Hartley, and the daughter of Philip and Rebecca Packer, both residents of North America, and that Mathias the father, had issue by her, after said marriage, an only child, the said testator; and said defendant also stated in his said answer, that he had heard it mentioned, that the said Mathias Aspden married the said Rebecca Hartley, while she was pregnant with the said testator, and that he believed the said Rebecca Hartley had several children by her former husband, Roger Hartley, none of whom were then living, but that some of them had left children who were living still; and said defendant further stated, that he believed that the said Mathias Aspden, the testator's father, had a former wife, named Mary Watson, the daughter of Jonathan Watson, of Cleviger, in Lancashire, by whom he had issue a daughter, named Mary, who intermarried with Henry Harrison, of Philadelphia, who is deceased, leaving several children, one of whom, named George Harrison, was then living in the city of Philadelphia; and that there were many persons in the United States of America who claimed to be next of kin to the said testator, and as such entitled to the said personal estate of the testator; and the said defendant further stated in his said answer, that he intended to apply the testator's personal estate in such manner as should

be determined *as should be determined* by a court of competent jurisdiction in America; and these repliants further say, that in or about the month of July, anno domini eighteen hundred and twenty-seven, an amended bill was filed by the said John Aspden, and that he died on or about the twenty-second day of February, anno domini eighteen hundred and twenty-eight; whereupon the said suit became abated; and that on or about the eighteenth day of March, anno domini eighteen hundred and twenty-eight, these repliants, together with Thomas Poole, the husband of the said Mary, (which Thomas Poole has since died) the said Jennet and Mary being the only children and co-heiresses at law of the said John Aspden, of London, deceased, filed their bill of revivor in the said court of chancery, against the said defendants, having first obtained letters of administration to the estate of John Aspden, from the prerogative court of Canterbury, in England; and the said Henry Nixon being out of the jurisdiction of said court, put in an answer to the said amended bill, stating as he had before stated in his answer to the said original bill of the said John Aspden; and these repliants further say, that the said John Aspden, of London, had been for a long time before his death in a state of mental imbecility and in great poverty, and left his daughters, the said Janet Jones and Mary Poole, and Thomas Poole, the husband of the said Mary, also in extreme poverty, and utterly unable to provide means, either from their own resources, or from the estate of their father, for carrying on their said suit in the said court of chancery; and also that Thomas Gregson who had been the attorney of the said John Aspden in his life time, and who was after his death the attorney of the said Jennet, Mary and Thomas, having been for a long time in very infirm health, also departed this life some time in the year eighteen hundred and thirty.

And these repliants further say, that in consequence of the poverty and imbecility of the said John Aspden during his lifetime, and the poverty of these repliants, his two daughters, the said Jennet and Mary, and of the husband of the said Mary, and of the illness and death of their said attorney, Thomas Gregson, they became utterly unable to prosecute and carry on the said suit in the said court of chancery, and the same was therefore not prosecuted and carried on, and no evidence whatever was taken, nor witnesses examined, nor proof entered into, in the said suit. And these repliants admit, that afterwards the said bill of complaint of the said John Aspden of London, and the bill of revivor of the said Jennet, Mary and Thomas, as administrators of the said John Aspden, was dismissed out of the said court of chancery, in or about the month of July, eighteen hundred and thirty, for want of due prosecution, and because no evidence was taken in the said cause, and without any hearing, debate, or argument upon the merits of the claim stated in the said original bill and bill of revivor, and without any examination, decision, or determination by the said court

of the title of the said John Aspden, and of the said Janet, Mary and Thomas, to the relief prayed for by them; and that by such dismissal of said bills, the personal estate of the testator then in Great Britain, and under the control of the said high court of chancery, was delivered to the said Henry Nixon, as executor of the said Mathias Aspden, to be applied by him according to the decision of some court of competent jurisdiction in the United States of America, and to be paid over to the person or persons, who in such court shall establish their claim to the same as heirs at law of the said testator, and for no other purpose whatever.

Without that, that any other matter or thing whatsoever, in the said plea contained, material or effectual in the law for these repliants to reply unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all and every of which matters and things these repliants are ready to aver and prove, as this honorable court shall direct; and they humbly pray, as in and by their said petition they have already prayed.

JAMES S. SMITH,
Solicitor for Mrs. Poole and Mrs. Jones.

In the circuit court of the United States for the third circuit, April sessions, 1828.

PACKER, vs. NIXON. } In equity.

The replication of Jennet, otherwise Janet Jones, widow of David Jones, deceased, and Mary Poole, widow of Thomas Poole, deceased, to the plea of Henry Nixon, executor of the will of Mathias Aspden, deceased, defendant.

These repliants, saving and reserving to themselves all and all manner of advantage and exception to the manifold insufficiencies of said plea, and without prejudice, (according to the order of the said court, made on the day of January last past,) for and by way of replication, say, that their original bill or petition exhibited against the said defendant, and all and every the matters, therein contained, are true, certain, and sufficient in the law to be answered unto; and that the plea of the defendant is untrue, uncertain, and insufficient in the law to be replied unto by these repliants; save and except only, that on or about the thirtieth day of July, anno domini eighteen hundred and twenty-five, a bill was filed in the high court of chancery in that part of the United Kingdom of Great Britain and Ireland called England, wherein John Aspden, then of the city of London, since deceased, the father of these repliants, was complainant, and the said Henry Nixon, executor of the will and codicils of Mathias Aspden, deceased, and Samuel Williams and John Sterling, and others, were defendants; the said Henry being then, and at all times thereafter, a citizen of, and resident in, the United States of America, and out of the juris-

diction of said court; wherein, after stating, among other things the death of the said Mathias Aspden, in the city of London, possessed of considerable property in the English, French, and American funds, and of other personal estate, and after setting forth the contents of the will and three codicils thereto, of the said Mathias Aspden, and also stating that the said testator departed this life without issue, and without any brother or sister of the whole blood him surviving, but leaving half brothers and sisters, and descendants of half brothers and sisters, on the mother's side, and descendants of a half sister on the father's side, but which half sister was illegitimate, him surviving; and stating that, at the time of the death of the said testator the said Henry Nixon was president of the Old bank at Philadelphia, and that he proved said will and codicils, in the proper office in Philadelphia, and in the prerogative court of Canterbury; and also, that the said testator left the said John Aspden, the complainant, his heir at law; and further stating that Thomas Aspden, of Simondstone, in Lancashire, was the common ancestor of the testator, and the said John Aspden, the complainant, and that Mathias Aspden, the father of the testator, was the third son of said Thomas Aspden, the common ancestor, who had twelve children; and that the said Mathias Aspden, the father, being resident in America, married there an American woman, and that the said Mathias Aspden had issue by her after said marriage, an only child, the said testator; and that the said Mathias Aspden, the father, died, in or about the year seventeen hundred and sixty-five, in Philadelphia, leaving the said testator his only lawful issue, him surviving; and also stating, among other things, that there were certain persons in America who claimed to be the heirs at law and next of kin to the testator, according to the laws of Pennsylvania, and as such entitled to his whole estate, and praying that an account might be taken of the personal estate of the said testator in England, and the residue ascertained; and that the said complainant might be declared by the court to be entitled, upon the true construction of the will and codicils, as the heir at law of the said testator to such residue; and that, in the mean time, the said defendant, Henry Nixon, and John Sterling and Samuel Williams, the constituted attorneys of the said Henry Nixon, also defendants, might be restrained by injunction from receiving any part of the personal estate of the said testator in England, and particularly from selling or transferring several stocks and securities in the said bill particularly mentioned and set forth; and certain monies and effects in the hands of other persons, also named as defendants to the said bill of complaint.

And these repliants admit, that an injunction was issued pursuant to the prayer of the above recited bill of complaint. And these repliants further say, that the said Henry Nixon, being out of the jurisdiction of said court, caused his answer to the said bill of complaint to be filed in the said court of chancery, on or about the twentieth day

of July, anno domini eighteen hundred and twenty-six, wherein he stated, among other things, that he did not know, and was unable to say from his belief or otherwise, whether said testator left the said John Aspden, the complainant, his heir at law, or whether Thomas Aspden, of Simondstone, was the common ancestor of the testator and the petitioner. And the said defendant in his said answer also stated, that he believed it to be true, that the name of the father of the said testator was Mathias Aspden; and that the said Mathias Aspden, the father, was resident in America, and while there married Rebecca Hartley, a native of America, who was the widow of Roger Hartley and the daughter of Philip and Rebecca Packer, both residents of North America; and that Mathias, the father, had issue by her after said marriage, an only child, the said testator; and said defendant also stated in his said answer, that he had heard it mentioned that the said Mathias Aspden married the said Rebecca Hartley while she was pregnant with the said testator, and that he believed the said Rebecca Hartley had several children by her former husband, Roger Hartley, none of whom were then living, but that some of them had left children who were living still.

And said defendant further stated, that he believed that the said Mathias Aspden, the testator's father, had a former wife, named Mary Watson, the daughter of Jonathan Watson, of Cleviger, in Lancashire, by whom he had issue a daughter, named Mary, who intermarried with Henry Harrison, of Philadelphia, who is deceased, leaving several children, one of whom, named George Harrison, was then living in the city of Philadelphia, and that there were many persons in the United States of America who claimed to be next of kin to the said testator, and as such entitled to the said personal estate of the testator; and the said defendant further stated in his said answer, that he intended to apply the testator's personal estate in such manner as should be determined by a court of competent jurisdiction in America.

And these repliants further say, that on or about the month of July, anno domini eighteen hundred and twenty-seven, an amended bill was filed by the said John Aspden, and that he died on or about the twenty-second day of February, anno domini eighteen hundred and twenty-eight, whereupon the said suit became abated; and that on or about the eighteenth day of March, anno domini eighteen hundred and twenty-eight, these repliants, together with Thomas Poole, the husband of the said Mary, (which Thomas Poole has since died) the said Jennet and Mary being the only children and coheiresses at law of the said John Aspden, of London, deceased, filed their bill of revivor in the said court of chancery, against the said defendants, having first obtained letters of administration to the estate of John Aspden, from the prerogative court of Canterbury, in England; and the said Henry Nixon being out of the jurisdiction of said court, put in an answer to the said amended bill, stating as he had before stated in his answer to the said original bill of the said John Aspden.

And these repliants further say, that the said John Aspden, of London, had been, for a long time before his death, in a state of mental imbecility, and in great poverty, and left his daughters, the said Janet Jones and Mary Poole, and Thomas Poole, the husband of the said Mary, also in extreme poverty, and utterly unable to provide means, either from their own resources or from the estate of their father, for carrying on their said suit in the said court of chancery; and also that Thomas Gregson, who had been the attorney of the said John Aspden, in his lifetime, and who was, after his death, the attorney of the said Jennet, Mary, and Thomas, having been, for a long time, in very infirm health, also departed this life some time in the year eighteen hundred and thirty.

And these repliants further say, that in consequence of the poverty and imbecility of the said John Aspden, during his life, and the poverty of these repliants, his two daughters, the said Jennet and Mary, and the husband of the said Mary, and of the illness and death of their said attorney, Thomas Gregson, they became utterly unable to prosecute and carry on the said suit in the said court of chancery, and the same was therefore not prosecuted and carried on, and no evidence whatever was taken, nor witnesses examined, nor proof entered into, in the said suit. And these repliants admit, that afterwards, the said bill of complaint of the said John Aspden, of London, and the bill of revivor of the said Jennet, Mary and Thomas, as administrators of the said John Aspden, was dismissed out of the said court of chancery, in or about the month of July, eighteen hundred and thirty, for want of due prosecution, and because no evidence was taken in the said cause, and without any hearing, debate, or argument upon the merits of the claim stated in the said original bill and bill of revivor, and without any examination, decision, or determination, by the said court, of the title of the said John Aspden, and of the said Jennet, Mary and Thomas, to the relief prayed for by them; and that by the said dismissal of such bills, the personal estate of the testator, then in Great Britain, and under the control of the said high court of chancery, was delivered to the said Henry Nixon, as executor of the said Mathias Aspden, to be applied by him according to the decision of some court of competent jurisdiction in the United States of America, and to be paid over to the person or persons, who, in such court, shall establish their claim to the same as heirs at law of the said testator, and for no other purpose whatever.

And these repliants further say, that afterwards, on or about the month of August, anno domini eighteen hundred and thirty, the said Jennet, otherwise Janet Jones, and Thomas Poole and Mary his wife, caused their bill of complaint to be filed in the court of exchequer of that part of the United Kingdom of Great Britain and Ireland called England, wherein the said Jennet, otherwise Janet Jones, and Thomas Poole and Mary his wife, were complainants, and the said Henry Nixon, who was then, and always continued to

be, out of the jurisdiction of the said court of exchequer, Henry Hugh Hoare, Charles Hoare, and Henry Merrick Hoare, and others, were defendants; which said bill of complaint charged and stated, in substance, as had been before charged and stated in the said original and amended bills, and bill of revivor, filed as aforesaid, in the said court of chancery, by the said John Aspden, and Janet, Mary, and Thomas; and to this said bill of complaint, so filed as aforesaid in the said court of exchequer, the said Henry Nixon (being out of the jurisdiction of the said court) filed his plea in bar, setting forth, as before set forth by him in his answers to the said original and amended bills in the high court of chancery, and alleging, that the said suit in the court of chancery was for the same matters, and to the same purpose, and for the like relief, as the said suit in the court of exchequer; and, therefore, the said Henry Nixon, the defendant, did plead the said dismissal of the said suit, by the high court of chancery, in bar to the bill of complaint in the said court of *the* exchequer. And these repliants admit, that the said plea in bar, so filed by the said Henry Nixon, was allowed by the said court of exchequer.

And the said repliants further replying say, that the said plea was allowed upon the ground of want of jurisdiction, in the said court of exchequer, to entertain a bill of complaint in relation to the same matters of which the said court of chancery had previously taken cognizance, although the said bill had been dismissed by the said court of chancery for want of prosecution; and because, also, acording to the special practice, rules, and regulations of the said court of exchequer, that court could not and would not sustain a bill of complaint of the same matter of which the said court of chancery had previously entertained jurisdiction; and because the suit in the court of exchequer was considered in the nature of an appeal from the decree of the said court of chancery, and such proceeding could not be supported, as the said courts were courts of concurrent jurisdiction; and the said courts of chancery having first entertained the suit in relation to the premises, obtained exclusive jurisdiction, so far as it respected the said court of exchequer, of the subject matters of the said bills of complaint; and that the said plea in the exchequer was allowed, without any debate, argument, or hearing upon the merits of the said claim of the said Jennet, otherwise Janet Jones, and Mary and Thomas Poole, and without any examination, decision, and determination whatever, of the title of said complainants to the relief sought by their said bill of complaint; and that, upon the allowance of his plea in bar, the said personal estate of the testator in England, and under the control of the said court of exchequer, was delivered unto the said Henry Nixon, to be applied by him according to the prayer of his answer in the high court of chancery in England, in such manner as should be decided by a court of competent jurisdiction in the United States of America, and paid over to such person or per-

sons as should establish their claim thereto, in said court, as heirs at law of the testator, (first deducting all proper charges and allowance,) under the provisions of his said will and codicils.

Without that, that any other matter or thing whatsoever, in the said plea contained, material or effectual in the law for these repliants to reply unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all and every of which matters and things these repliants are ready to aver and prove, as this honorable court shall direct; and they humbly pray, as in and by their said petition they have already prayed.

JAMES S. SMITH,
Solicitor for Mrs. Poole and Mrs. Jones.

Circuit court of the United States, for the eastern district of Pennsylvania, April sessions, 1828.

PACKER, vs. NIXON. } No. 1.—In equity.

The rejoinder of Henry Nixon, the defendant, to the replication of Janet Jones and Mary Poole.

The said defendant, now and at all times hereafter, saving and reserving to himself all and all manner of benefit and advantage of exception to the uncertainty and insufficiency of the said replication, *and* saith, that the defendant's plea is certain, true, and sufficient in the law to be replied unto; and also saith, as in and by his said plea he hath already said, and doth and will aver and maintain, all and every thing and things therein to be true and certain, in such manner and form as they, and every of them, are therein alleged and expressed.

And this defendant further saith, that the said replication of the said complainants or petitioners is untrue, uncertain, and insufficient in the law to be rejoined unto by this defendant. Without this, that any other matter or thing whatever, in the said replication contained, material or effectual in the law to be rejoined unto, confessed and avoided, traversed or denied, is true; all which matters and things this defendant is, and will be, ready to aver and prove, as this honorable court shall direct; and humbly prays, as in and by his said plea he hath already prayed.

J. R. INGERSOLL, *for deft.*

Circuit court of the United States, for the eastern district of Pennsylvania, April sessions, 1828.

PACKER, vs. NIXON. } No. 1.—In equity.

The rejoinder of Henry Nixon, the defendant, to the replication of John A. Brown, administrator of John Aspden, late of Old street, London.

The said defendant, now and at all times hereafter, saving and reserving to himself all and all manner of benefit and advantage of exception to the uncertaincy and insufficiency of the said replication, saith, that the defendant's plea is true, certain, and sufficient in the law to be replied unto; and also saith, as in and by his said plea he hath already said, and doth and will aver and maintain, all and every thing and things therein to be true and certain, in such manner and form as they, and every of them, are therein alleged and expressed.

And this defendant further saith, that the said replication of the said complainant or petitioner is untrue, uncertain, and insufficient in the law to be rejoined unto by this defendant; without this, that any other matter or thing whatever, in the said replication contained, material or effectual in the law to be rejoined unto, confessed and avoided, traversed or denied, is true; all which matters and things this defendant is, and will be, ready to aver and prove, as this honorable court shall direct; and humbly prays, as in and by his said plea he hath already prayed.

J. R. INGERSOLL, *for def.*

Circuit court of the United States, for the eastern district of Pennsylvania, April sessions, 1828.

PACKER, vs. NIXON. } No. 1.—In equity.

The rejoinder of Henry Nixon, the defendant, to the replication of Janet Jones and Mary Poole.

The said defendant, now and at all times hereafter, saving and reserving to himself all and all manner of benefit and advantage of exception to the uncertainty and insufficiency of the said replication, says, that the defendant's plea is certain, true, and sufficient in the law to be replied unto; and also says, as in and by his said plea he has already said, and does and will aver and maintain, all and every thing and things therein to be true and certain, in such manner and form as they, and every of them, are therein alleged and expressed.

And this defendant further says, that the said replication of the said complainants or petitioners is uncertain, untrue, and insufficient

in the law to be rejoined unto by this defendant; without this, that any other matter or thing whatever, in the said replication contained, material or effectual in the law to be rejoined unto confessed, and avoided, traversed or denied, is true; all which matters and things this defendant is, and will be, ready to aver and prove as this honorable court shall direct, and humbly prays, as in and by his said plea he has already prayed.

J. R. INGERSOLL, *for def.*

Circuit court of the United States, for the eastern district of Pennsylvania, April sessions, 1828.

PACKER, vs. NIXON. } No. 1.—In equity.

The rejoinder of Henry Nixon, the defendant, to the replication of John A. Brown, administrator of John Aspden, late of Old street, London.

The said defendant, now and at all times hereafter, saving and reserving to himself all and all manner of benefit and advantage of exception to the uncertainty and insufficiency of the said replication, saith, that the defendant's plea is certain, true, and sufficient in the law to be replied unto; and also saith, as in and by his said plea he hath already said, and doth and will aver and maintain, all and every thing and things therein to be true and certain, in such manner and form as they, and every of them, are therein alleged and expressed.

And this defendant further saith, that the said replication of the said complainant or petitioner is uncertain, untrue, and insufficient in the law to be rejoined unto by this defendant; without this, that any other matter or thing whatever, in the said replication contained, material or effectual in the law to be rejoined unto, confessed and avoided, traversed or denied, is true; all which matters and things this defendant is, and will be, ready to aver and prove, as this honorable court shall direct; and humbly prays, as in and by his said plea he hath already prayed.

J. R. INGERSOLL, *for def.*

In the circuit court of the United States, in and for the district of Pennsylvania, in the third circuit, April session, 1828.

SAMUEL PACKER, a citizen of the State of New Jersey, vs. HENRY NIXON, a citizen of the State of Pennsylvania, executor of the last will and testament of Matthias Aspden, dec. } No. 1.—In equity.

Interrogatories to be administered to witnesses to be produced, sworn, and examined on the part of the defendant, in pursuance of

an order of the court in the above cause, dated the third day of January, A. D. one thousand eight hundred and thiry-seven.

Look upon the paper writings produced and shewn to you at this the time of your examination, marked

State whether or not the same, or any or either, and which of them, do or doth contain a true copy or copies of any, and what, record or records, or matters recorded, or in nature of record, of any, and what, court or courts, of any, and what, original or originals, of which the same do or doth purport to be a copy or copies?

Have you or have you not carefully examined or compared the said produced papers or writings, or either, and which of them, with such, if any, record or records, or matters recorded, or in nature of record, or other original or originals? Declare the truth and your knowledge herein fully.

J. R. INGERSOLL, *for defendant.*

April 7th, 1837.

Defendant's commissioners Henry Willis and ——— Willis, of the firm of Willis, Watson, Bowers and Willis, attorneys or solicitors, London.

In the circuit court of the United States, in and for the district of Pennsylvania, in the third circuit, April sessions, 1828.

SAMUEL PACKER, a citizen of the State of New Jersey,
vs.
HENRY NIXON, a citizen of the State of Pennsylvania, executor of the last will and testament of Matthias Aspden, deceased. } No. 1—In equity.

Interrogatories to be administered to witnesses, to be produced and examined under a commission to be issued to London, in pursuance of an order of said court made on the 3d day of January, A. D. 1837, in the above cause, now pending and at issue in the said court—

On behalf of Janet Jones and Mary Poole, of London, complainants, admitted as parties in the above cause, under the mandate of the Supreme Court of the United States.

Interrogatory 1. Do you know the parties complainants or defendant, in the title to these interrogatories named, or any or either of them? Did you know the testator, Matthias Aspden, or John Aspden, of London, deceased; and do you know his daughters, the said Janet Jones and Mary Poole?

If yea, how long have you known them, or any of them, and which of them, respectively? Declare the truth of the several matters inquired of according to the best of your knowledge, remembrance, and belief, at large.

Interrogatory 2. Look at the paper writings produced in answer

to the interrogatory proposed on behalf of the defendant above named under the commission, if any such are produced, and state whether, in the suits in such paper writings referred to, wherein John Aspden, of London, Janet Jones and Thomas Poole and Mary his wife, or some *or* one of them, were complainants, or among the complainants, and Henry Nixon, executor of Matthias Aspden, deceased, and others, were defendants, there was or was not any argument or discussion before the chancellor, vice chancellor, lord chief baron, or other baron of the exchequer, or other judge in equity, or before any other person or persons in relation to the matters, or any of them, contained in the pleadings of record, or in the nature of records, in the several suits aforesaid.

If yea, state particularly the points argued and decided, and what were the decisions of the courts or judges thereon; and whether the said court or courts determined or decided upon the pedigree of the said John Aspden, of London, deceased, or of his daughters, Janet Jones and Mary Poole, or any or either of them, or upon their connexion with, or relationship to, the said Matthias Aspden, the defendant's testator above named, or upon the merits of the claims set forth in their respective original bills and bills of revivor, or any or either of them, or upon the proper construction of the will of the said Matthias Aspden, the testator, or who was the person or persons designated therein as his heir-at-law. Declare fully your knowledge in all these matters, according to the best of your remembrance and belief, at large.

Interrogatory 3. State whether or not any evidence was given in the said several suits to which the paper writings above referred to (if any such are produced,) relate; and whether any depositions were taken or prepared in said several suits; and whether any evidence was given proving, or intended to prove, the pedigree of the said John Aspden, of London, deceased, or that of his daughters, Janet Jones and Mary Poole, or their relationship to the said testator, Matthias Aspden. Declare all these matters fully and at large.

Interrogatory 4. Were or were not any depositions or evidence read or given to the court or courts aforesaid in the course of the said suit or suits in the said paper writings, if any such are produced, mentioned, or referred to? If yea, annex copies thereof to your answers to these interrogatories, and cause them to be identified by the commissioners herein named.

Interrogatory 5. Have the claims of the said John Aspden, of London, deceased, as stated in the paper writings aforesaid, if any such are produced, been gone into in any of the said courts, and were or were not the decisions referred to therein made on preliminary objections?

Interrogatory 6. What were the age, circumstances, health, mental capacity, and occupation of the said John Aspden, of London, deceased, when the bill in the high court of chancery, if any such

is produced, was originally filed? When did he die, and what estate did he leave?

Interrogatory 7. What were the ages, circumstances, and occupations of Janet Jones and Mary Poole, at the time of, and since the death of, their said father?

Interrogatory 8. If no evidence was given to the court or courts in the said suits, in said paper writings produced or referred to, (if any such are produced,) as aforesaid, state the causes, if any you know, why no such evidence was given to the said courts to support the claims stated in the original bills and bills of revivor therein referred to.

Interrogatory 9. State the causes and grounds of the dismissals of the original bills or bills of revivor in the said paper writings mentioned and referred to, (if any such writings are produced as aforesaid by the several courts wherein they were filed;) and whether such dismissals were or were not decreed upon the determination of the rights of the parties, complainants and defendants, therein, or upon the rules of practice adopted by said courts, or in order that the funds and property in question should be remitted to America to be distributed under the direction of some competent tribunal there. Declare fully and at large all your knowledge herein.

Interrogatory 10. Are the paper writings produced on the part of the defendant before the commissioners, (if any such are produced in answering the interrogatory in chief,) whole, entire, complete, and perfect copies of all the records of proceedings in the respective court or courts from which they are respectively taken in the suit or suits therein referred to? Have you examined and enquired for other records or matters recorded, or in the nature of records in the said courts, or either of them, in the said suit or suits? Have you found or discovered any such? If yea, produce them all, and cause them to be identified by the commissioners herein named.

Interrogatory 11. Do you know, or can you set forth, any other matter or thing which may be of benefit or advantage to the said Janet Jones and Mary Poole, of London, or that may be material to the subject of your examination on their behalf, or to the questions in this cause. If yea, set them forth, and all the particulars thereof, according to the best of your knowledge and belief, as fully as if you had been particularly interrogated thereto.

JAMES S. SMITH,
For Janet Jones and Mary Poole.

Commissioners on behalf of Janet Jones and Mary Poole—
NATHANIEL MILNE,
WILLIAM COWBURN,
Both of London, or either of them.

In the circuit court of the United States, in and for the district of Pennsylvania, in the third circuit, April session, 1828.

SAMUEL PACKER, a citizen of the State of New Jersey,
vs.
HENRY NIXON, a citizen of the State of Pennsylvania, executor of the last will and testament of Matthias Aspden, deceased. } No. 1, in equity.

Interrogatories to be administered to witnesses to be produced and examined under a commission to be issued to London, in pursuance of an order of said court, made on the 3d day of January, 1837, in the above cause now pending and at issue in the said court—

On behalf of John A. Brown, administrator of John Aspden, formerly of London, deceased, one of the complainants admitted as parties in the above cause, under the mandate of the Supreme Court of the United States.

Interr'y 1. Do you know the parties complainants or defendant in the title to these interrogatories named, or any or either of them? Did you know the testator Matthias Aspden, or the intestate John Aspden, of London, deceased? If yea, how long have you known them, or any of them, and which of them respectively; declare the truth of the several matters enquired of, according to the best of your knowledge, remembrance, and belief at large?

Interr'y 2d. Look at the paper writings produced in answer to the interrogatory proposed in behalf of the defendant above named under this commission, if any such are produced, and state whether the suits in such paper writings referred to, wherein John Aspden, of London, Janet Jones or Thomas Poole, and Mary his wife, or either or some of them, were complainants, or among the complainants, and Henry Nixon, executor of Matthias Aspden, and others, were defendants, there was or was not any argument or discussion before the chancellor, vice chancellor, lord chief baron, or other baron of the exchequer, or other judge in equity, or before any other person or persons in relation to the matters, or any of them, contained in the pleadings of record, or in the nature of records in the several suits aforesaid? If yea, state particularly the points argued and decided, and what were the decisions of the courts or judges thereon, and whether the said court or courts determined or decided upon the pedigree of the said John Aspden, of London, deceased, or of his daughters Janet Jones and Mary Poole, or any or either of them, or upon their connexion with, or relationship to, the said Matthias Aspden, the defendant's testator above named, or upon the merits of the claims set forth in their respective original bills and bills of revivor, or any or either of them, or upon the proper construction of the will of the said Matthias Aspden, the testator, or who was the person or persons designated therein as his heir at law? Declare fully your knowledge in all these matters, according to the best of your remembrance and belief at large.

Interr'y 3d. State whether or not any evidence was given in the said several suits to which the paper writings above referred to (if any such are produced) relate; and whether any depositions were taken or prepared in said several suits; and whether any evidence was given proving, or intended to prove, the pedigree of the said John Aspden, of London, deceased, or that of his daughters Janet Jones and Mary Poole, or their relationship to the said Matthias Aspden, the testator? Declare all these matters fully and at large.

Interr'y 4th. Were or were not any depositions or evidence given or read to the court or courts aforesaid, in the course of said suit or suits in the said paper writings (if any such are produced) mentioned or referred to? If yea, annex copies thereof to your answers to these interrogatories, and cause them to be identified by the commissioners herein named.

Interr'y 5th. Have the claims of the said John Aspden, of London, deceased, as stated in the said paper writings, (if any such are produced,) been gone into in any of the said courts; and were or were not the decisions referred to therein made on preliminary objections?

Interr'y 6th. What were the age, circumstances, health, mental capacity, and occupation, of the said John Aspden, of London, deceased, when the rule in the high court of chancery, if any such is produced, was originally filed; when did he die, and what estate did he leave?

Interr'y 7th. What were the ages, circumstances, and occupations of Janet Jones and Mary Poole, at the time of, and since, the death of their said father?

Interr'y 8th. If no evidence was given to the court or courts in the said suits, in said paper writings produced referred to, (if any such are produced as aforesaid,) state the causes, if any you know, why no such evidence was given to the said courts to support the claims stated in the original bills and bills of revivor therein referred to.

Interr'y 9th. State the causes and grounds of the dismissals of the original bills, *and* or bills of revivor, in the said paper writings mentioned, and referred to (if any such writings are produced as aforesaid) by the several courts wherein they were filed; and whether such dismissals were or were not decreed upon the determination of the rights of the parties complainants and defendants therein, or upon the rules of practice adopted by said courts, or in order that the funds and property in question should be remitted to America, to be distributed under the direction of some competent tribunal there. Declare fully and at large all your knowledge herein.

Interr'y 10th. Are the paper writings, produced before the commissioner on the part of the defendant as aforesaid, whole, entire, complete, and perfect copies of all the records of proceedings in the respective court or courts from which they were respectively

taken, in the suit or suits therein referred to? Have you enquired or examined for other records or matters of record, or as of record in the said courts in the said suit or suits, or either of them? Have you found or discovered any such? If yea, produce them all, and cause them to be identified by the commissioners herein named.

Interr'y 11th. Do you know, or can you set forth, any other matter or thing which may be of benefit or advantage to the said John A. Brown, administrator as aforesaid in this cause, or that may be material to the subject of your examination on his behalf, or to the questions in this cause? If yea, set them forth, and all the particulars thereof, according to the best of your knowledge and belief, as fully as if you had been particularly interrogated thereto.

HENRY J. WILLIAMS,
For J. A. BROWN,
Adm'r of J. A.

Commissioners on behalf of John A. Brown, administrator of John Aspden, deceased—

NATHANIEL MILNE,
WILLIAM COWBURN,
Both of London, or either of them.

In the circuit court of the United States, in and for the district of Pennsylvania, in the 3d circuit, April sess., 1828.

SAMUEL PACKER, a citizen of the State of New Jersey,
vs.
HENRY NIXON, a citizen of the State of Pennsylvania, executor of the last will and testament of Matthias Aspden, deceased. } No. 1, in equity.

Cross interrogatories to be administered to witnesses, to be produced, sworn, and examined, on behalf of the defendant, in pursuance of an order of the court in the above cause, dated the 3d day of January, A. D. 1837, on the part and on behalf of Janet Jones and Mary Poole, of London, complainants, admitted parties to the above cause, under the mandate of the Supreme Court of the United States.

First. Do you know the parties, complainants or defendants, in the title to these interrogatories named, or any or either of them? Did you know the testator, Matthias Aspden, or John Aspden, of London, deceased, or do you know his daughters, the said Janet Jones and Mary Poole? If yea, how long have you known them, or either and which of them? Declare the truth of the several matters in this interrogatory enquired of, according to the best of your knowledge, remembrance, and belief, at large.

Second. Are the paper writings, produced on the part of the defendant before the commissioners, (if any such are produced in answering the interrogatory in chief,) whole, entire, complete, and perfect copies of all the records of proceedings in the respective

court or courts, from which they are respectively taken, in the suit or suits therein referred to? Have you examined and enquired for other records, or matters recorded, or in the nature of records, in the said courts, or either of them, in the said suit or suits? Have you found or discovered any such? If yea, produce them all, and cause them to be identified by the commissioners herein named.

Third. Do you know, or can you set forth, any other matter or thing, which may be of benefit or advantage to the said Janet Jones and Mary Poole, or that may be material to the subject of your cross examination? If yea, set forth the same, and all the particulars thereof, according to the best of your knowledge and belief, as fully as if you had been thereunto particularly interrogated.

JAMES S. SMITH,
For Janet Jones and Mary Poole.

Commissioners on behalf of Janet Jones and Mary Poole—
NATHANIEL MILNE,
WILLIAM COWBURN,
Both of London, or either of them.

In the circuit court of the U. States, in and for the dist. of Pennsylvania, in the 3d circuit, April, 1828.

SAMUEL PACKER, a citizen of the State of New Jersey,
vs.
HENRY NIXON, a citizen of the State of Pennsylvania, executor of the last will and testament of Matthias Aspden, deceased. } No. 1, in equity.

Cross interrogatories to be administered to witnesses, to be produced, sworn, and examined, on behalf of the defendant, in pursuance of an order of the court in the above cause, dated the 3d day of January, A. D. 1837—

On the part and behalf of John A. Brown, administrator of John Aspden, formerly of London, deceased, a complainant, admitted a party to the above cause, under the mandate of the Supreme Court of the United States:

1. Do you know the parties, complainants or defendant, in the title to these interrogatories named, or any or either of them? Did you know the testator, Matthias Aspden, or the intestate, John Aspden, of London, deceased? If yea, how long [have you] known, or did you know them, or either or which of them? Declare the truth of the matters in this interrogatory enquired of, according to the best of your knowledge, remembrance, and belief, fully and at large.

Int'y. 2d. Are the paper writings (if any such are produced in answering the interrogatory in chief) whole, entire, complete, and perfect copies of all the records and proceedings in the respective court or courts, from which they are respectively taken in the suit or suits therein referred to? Have you examined or enquired for other records, or matters recorded, or in the nature of records, in the

said courts, or either of them, in the said suit or suits? Have you found or discovered any such? If yea, produce them all, and cause them to be identified by the commissioners herein named.

3d. Do you know, or can you set forth, any other matter or thing which may be of benefit and advantage to the said John A. Brown, administrator to the said John Aspden, deceased, or that may be material to the subject of your cross examination? If yea, set forth the same, and all the particulars thereof, according to the best of your knowledge and belief, as fully as if you had been particularly interrogated thereunto.

H. J. WILLIAMS,
For JOHN A. BROWN,
Adm'r of J. Aspden, dec'd.

Commissioners on behalf of John A. Brown, adm'r of John Aspden, dec'd—

NATHANIEL MILNE,
WILLIAM COWBURN,
Both of London, or either of them.

In the circuit court of the United States, for the eastern district of Pennsylvania, in the third circuit of April sessions, 1828, No.

SAMUEL PACKER, a citizen of the State of New Jersey,
vs.
HENRY NIXON, a citizen of the State of Pennsylvania, executor of the last will and testament of Mathias Aspden, deceased. } In equity.

To the honorable the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit.

Humbly complaining, sheweth unto your honors, your orator, Samuel Packer, a citizen of the State of New Jersey, that on or about the of , in the year of our Lord one thousand eight hundred and twenty-eight, your orator exhibited his original bill in this honorable court, against Henry Nixon, executor of the last will and testament of Mathias Aspden, deceased, as the defendant thereto, thereby stating several matters and things as are therein for that purpose more particularly set forth, praying, &c. And your orator further sheweth, that the said defendant, being duly served with process of subpœna, appeared, and put in his answer to the said original bill, as in and by, &c. And your orator further sheweth, that your orator afterwards obtained an order of this honorable court, to amend his said original bill, and that the said defendant, Henry Nixon, might answer the said amendments, and your orator did accordingly exhibit his amended bill, stating the several matters and things therein set forth, and praying, &c.; and the said defendant, Henry Nixon, put in his amended answer thereto, as in and by, &c. And before any other or further proceedings were had in the said cause, the said defendant, Henry Nixon, de-

parted this life; and your orator further sheweth, that after the death of the said Henry Nixon, to wit, on the day of , in the year of our Lord one thousand eight hundred and forty-one, letters of administration de bonis non cum testamento annexo of the said Mathias Aspden, deceased, were granted by the register of the probate of wills for the city and county of Philadelphia, to Joseph Trotter, esquire, of the city of Philadelphia, who hath taken upon himself the burthen of the execution thereof. And the said suit and proceedings having become abated by the death of the said Henry Nixon, your orator is informed, that he is entitled to have the same revived against the said Joseph Trotter, administrator as aforesaid.

To the end, therefore, that the said bill and answer, and the amendments thereto, and other proceedings thereupon had, may stand revived against the said Joseph Trotter, administrator as aforesaid, as defendant, and be in the same plight and condition as the same were at the time of the abatement thereof, may it please your honors to grant unto your orator a writ of subpœna to revive, issuing out of this honorable court, to be directed to the said Joseph Trotter, administrator as aforesaid, thereby commanding him at a certain day, and under a certain penalty to be therein limited, personally to be and appear before your honors in this honorable court, and then and there shew cause, if any he can, why the said suit and proceedings therein had, should not stand and be revived against him, and be in the same plight and condition as the same were in at the time of the abatement thereof. And further, to stand and abide such order and dercree in the premises, as to your honors shall seem meet; and your orator will ever pray, &c.

THOMAS A. BUDD,
Complainant's solicitor.

To the honorable the judges of the circuit court of the United States, in and for the eastern district of *of* Pennsylvania, in the third circuit.

The petition of John Aspden, a subject of the Queen of the United Kingdom of Great Britain and Ireland, respectfully sheweth: That on the 26th day of November, A. D. 1831, your petitioner presented a petition to this honorable court, setting forth that he firmly believes he was entitled as heir at law and residuary devisee to the residue of the estate devised in and by the will of Mathias Aspden, deceased, of which will Henry Nixon appeared in this court as executor, to a bill filed against him on the equity side thereof, by Samuel Packer, No. 1, to April sessions, 1828, and praying, &c. That the said Henry Nixon hath departed this life, and that afterwards, to wit, on the day of , A. D. one thousand eight hundred and forty-one, letters of administration de bonis non cum testamento annexo of the said Mathias Aspden, were granted by the register of the probate of wills, and for the county of Phila-

delphia, to Joseph Trotter, esq., of the city of Philadelphia, who hath taken upon him the burthen of the execution thereof. And the said suit and proceedings having become abated by the death of the said Henry Nixon, the said Samuel Packer hath exhibited his bill to revive the same against the said Joseph Trotter, administrator as aforesaid. Your petitioner therefore prays, that he may be admitted on the record as a party to the said revised suit, for the purposes set forth in his original petition.

JOHN ASPDEN,
By his solicitor JAMES M. BROWN.

In the exchequer, Trinity term, 11th George 4th, and 1st William the 4th, 10th August, 1830.

DAVIS. DAVIS.

This is the paper exhibit or document referred to by Thomas Hand, in his examination as the paper marked M.

THOMAS HAND.

W. COWBURN,
ALFRED KING.

To the right honorable Henry Goulburn, chancellor and under treasurer of his majesty's court of exchequer, at Westminster, the right honorable Sir William Alexander, knight, lord chief baron of the same court, and the rest of the barons there.

MIDDLESEX.

Humbly complaining, shew unto your honors, your oratrix Jennet, otherwise Jenet Jones, of Old street, in the parish of Saint Luke, in the county of Middlesex, widow, and Thomas Poole, of Hoxton, in the same county, yeoman, and Mary his wife, debtors and accountants to his majesty, as by the records of this honorable court, on reference thereunto and otherwise, it may appear, that Mathias Aspden, late of King street, Holburn, in the county of Middlesex, deceased, was formerly a merchant in Philadelphia, in North America, but that he quitted that place when the war broke out between this country and America, in the year one thousand seven hundred and seventy-six, and came to and resided, and thenceforth became domiciled in this country until the time of his death hereinafter mentioned; and although he went to America after the conclusion of the said war, and at one or two other times only, he went there only temporarily and to transact or settle his affairs, and he also went once or twice on the continent of Europe, and always returned to this country as to his home; and the said Matthias Aspden, during his residence in this country, as the place of his domicile, invested large sums of money in the purchase of bank stock and of annuities in the funds of this country, and also in the funds of the East India and South Sea Companies, and in the French funds; and that the said Matthias Aspden departed this life on the ninth day of August, one thousand eight hundred and twenty-four, being then

resident in King street, Holborn aforesaid, and domiciled as aforesaid, in this country. And your oratrixes and orator further shew unto your honors, that the said Matthias Aspden in his lifetime, and at the time of making his will hereinafter mentioned, was possessed of very considerable personal property, and that he was in particular possessed of considerable property in the English and American and French funds, and of various other kinds of personal estate and effects to a very considerable amount in the whole; and that in his lifetime he duly made his last will and testament, in writing, with several codicils thereto, all bearing date the sixth day of December, one thousand seven hundred and ninety-one, and which are in the words and figures following, viz:

"These are to certify, that I do hereby annul and revoke all my "former wills, giving and bequeathing my estate, real and person- "al, to my heir at law, first paying all my just debts and funeral "expenses, and the following legacies:

"First, to each of the children of my half brother, Benjamin "Hartley, deceased, that may be alive at my death, the sum of "one hundred pounds to each, Pennsylvania currency; and to my "half sister Bersheba Zane, wife of Elnathan Zane, the sum of "four hundred pounds Pennsylvania currency; both the above "living or did live near Haddonfield; and to my half brother, Ro- "ger Hartley, living at present in Lancaster county, the sum of "three hundred pounds of the like currency.

"Witness my hand this 6th day of December, 1791: Philadel- "phia. MATTHIAS ASPDEN.

"Least any question should arise about the legitimacy of my "birth, it is my will that my estate, real and personal, should go to "the party who would be my lawful heir in case there might arise "no doubt on that head. It is firmly believed by and from "the best information, that my birth was after marriage. Phila- "delphia, December 6, 1791.

"I do further give one hundred pounds currency, to each of the "children of my deceased half sister, Ann Hinchman, that may "be living at my death. December 6, 1791.

"*The last will of Matthias Aspden.*—I do hereby appoint my "friends Mr. George Roberts and Mr. Abram Liddon, with the pre- "sident of the Old bank at the time being, to be my executors to "this my last will.

MATTHIAS ASPDEN.

"Note.—My property in England is as follows: £12,500 in the "4 per cent. stock; £3,000 in the 5 per cent. stock; £1,800 in the "3 per cent stock," as in and by the probate of the said will when the same shall be produced to this court, reference being thereto had, will appear; and your oratrixes and orator further shew unto your honors, that the said testator died without having revoked or altered his said will and codicils, and without issue, he never hav-

ing been married; and that the said George Roberts and Abram Liddon, both died in the lifetime of the said testator, and that the president at the bank at Philadelphia, at the time of the death of the said testator, was Henry Nixon, esquire; and the testator by the expression in the last codicil to his said will, of "the president of the Old bank," meant the president of the bank at Philadelphia; and the said Henry Nixon, soon after the death of the said testator, viz: in the month of November, one thousand eight hundred and twenty-four, proved the said will and codicils in the proper ecclesiastical court at Philadelphia, and he has also proved the said will and codicils in the proper ecclesiastical court in this country, namely, in the prerogative court of the Archbishop of Canterbury, and has obtained probate thereof from the said court, bearing date the twenty-seventh day of July, one thousand eight hundred and twenty-five, and has thereby become the legal personal representative of the said testator, and the said Henry Nixon has possessed himself of all the personal estate and effects of the said testator in America, and elsewhere, except in this country, and which were much more than sufficient to pay all the funeral and testamentary expenses, debts and legacies, of the said testator; after payment whereof, there is now remaining a very considerable surplus of the personal estate and effects of the said testator possessed by the said Henry Nixon; and your oratrixes and orator further shew unto your honors, that the said testator was not, at the time of his death, seized of or entitled to any real estate, but that he was, at the time of his death, possessed of (among other descriptions of property) the sums following in the English funds, that is to say: four thousand pounds bank stock, ten thousand pounds three per cent. consolidated bank annuities, six thousand five hundred pounds three and an half per cent. bank annuities, and three thousand five hundred pounds new four per cent. annuities, and also of six thousand pounds 4 per cent. bank annuities, (not assented to take three pounds ten shillings per cent. per annum, in lieu thereof, in the manner provided by an act of Parli[a]ment, passed in the fifth year of his late majesty, entitled an act for transferring several annuities of four per cent. per annum, into annuities of three pounds ten shillings per annum; and such several sums of stock are still standing in the books of the governor and company of the Bank of England, in the name of the said testator, with an arrear of dividends thereon respectively; and the said testator, also, was possessed of East India stock and South Sea stock to a considerable amount, that is to say, three thousand pounds East India stock, and five thousand pounds South Sea stock; and that the said testator died also possessed of other personal estate and effects in England, of various descriptions, to a large amount in the whole, and had money in the hands of Henry Hugh Hoare, Charles Hoare and Henry Merrick Hoare, of Fleet street, in the city of London, bankers, who also held certificates of inscriptions of stock in the French funds, in the name of the said

testator, and certificates or other documents of, or relating to, inscriptions of actions of the Bank of France, in the name of the said testator, which inscriptions were to a very large amount respectively; and your oratrixes and orator further shew, unto your honors that the said testator left John Apsden, since deceased, his heir at law, according to the law of England in evidence; whereof your oratrixes and orator shew, that Thomas Apsden, of Simondstone, in Lancashire, was the common ancestor of both the said testator and the said John Apsden, and died many years ago, having had issue twelve children, the eldest of whom was John Apsden who died and was buried at Saint Paul's, Deptford, in Kent, in the month of January, in the year one thousand seven hundred and fifty-four, leaving issue only one son, viz., Andrew Aspden, who died and was also buried at Saint Paul's, Deptford, aforesaid, in the month of September, in the year one thousand seven hundred and seventy-one, leaving issue the said John Aspden, his only child and heir at law.

And your oratrixes and orator further shew unto your honors, that the name of the father of said testator was Matthias Aspden, who was the third son of the said Thomas Aspden, the common ancestor; and that the said Matthias Aspden, the father, being resident in America, married there an American woman, whose Christian name was Rebecca, who was the widow of one Roger Hartley, and had issue by her, some time after the said marriage, an only child, namely, the said testator; and the said Matthias Aspden, the father, died in or about the year one thousand seven hundred and sixty-five aforesaid, leaving the said testator, his only child, him surviving; so that upon the failure of issue of the said Matthias Aspden, the father, and of the said Matthias Aspden, the testator, the said John Aspden, your orator's late father, as the grandson and heir-at-law of the said John Aspden, who was the eldest brother of the said Matthias Aspden, the father of the said testator, became, on the death of the said testator, his heir-at-law, and as such heir of the said testator, he became entitled, under the will of the said testator, to the residue of the personal estate and effects of the said testator, after payment of his funeral and testamentary expenses, debts, and legacies.

And your oratrixes and orator further shew unto your honors, that the said Henry Nixon, altho' he has proved the will and codicils of the said testator in this country, always has been, and still is, resident at Philadelphia aforesaid, in North America; and he alleges that there are certain persons in America who claim to be the heirs-at-law and next of kin to the said testator, according to the laws of Pennsylvania, one of the United States of North America, within which the said city of Philadelphia is situated; for that by the laws of the said State of Pennsylvania, the real and personal property of a person who dies intestate, leaving no father, mother, wife, or children, but leaving brothers and sisters, of the whole and also of

the half blood, or the descendants of such brothers and sisters, are distributable as follows, that is to say, the brothers and sisters of the whole blood, and the descendants representing such of the brothers and sisters of the whole blood as are dead, inherit the real estate in fee simple, as tenants in common, the descendants of those who are dead, taking together the same share which their respective parents or ancestors would have taken if living, and the brothers and sisters, as well of the whole as of the half blood, and the descendants representing such of the said brothers and sisters as are dead, take the personal estate between them, (the descendants representing a deceased brother or sister taking the same share which their respective parents or ancestors would have taken if living;) or if there are no brothers and sisters of the whole blood, or any descendants of such, then the brothers and sisters of the half blood, and their descendants, take the personal estate between them, in the same manner, in exclusion of the other kindred of the whole blood, and also inherit the real estate in fee simple; and that the representation of the deceased brothers and sisters is not confined to their children, but is extended to their most remote descendants, such descendants taking always the same share which their respective parents would have done if living.

And your oratrixes and orator further show unto [your] honors, that they are advised, that under the will of the said testator, the residue of his estate, after payment of his funeral and testamentary expenses and debts, and the legacies bequeathed by his said will, passed to the said John Aspden, your oratrixes' late father, as the heir-at-law of the said testator, according to the laws of England, and did not pass to the heirs-at-law of the said testator, according to the laws of the said State of Pennsylvania, or to the next of kin of the said testator, either according to the laws of the said State, or according to the laws of England; and that the said John Aspden, as the heir-at-law of the said testator, according to the laws of England, was, at the time of his death, well entitled to the residue of the said testator's estate; and the said John Aspden, being so entitled, departed this life on or about the eleventh day of March, one thousand eight hundred and twenty-eight, leaving your oratrixes, his only children and next of kin, surviving him; and that he died intestate, and that your oratrixes and orator have procured letters of administration of the personal estate and effects of the said John Aspden, their late father, to be granted to them, by and out of the prerogative court of the Archbishop of Canterbury, and have thereby become his legal representatives, as by the said letters of administration, reference being had thereto when produced, will appear.

And your oratrixes and orator further shew unto your honors, that they have caused notice of their right, under the will of the said testator, as the personal representatives of the said John Aspden, to be given to the said Henry Nixon, and the said Henry Nixon

well knows and believes, or has reason to believe, that the said John Aspden was, at the death of the said testator, his heir-at-law, according to the laws of England; and that your oratrixes and orator are the personal representatives of the said John Aspden; and your oratrixes and orator therefore well hoped, that the said Henry Nixon would have accounted with them for the personal estate and effects of the said testator, possessed by him, and for his application thereof, and would have transferred, or caused to be transferred, into their names, the several sums of stock hereinbefore mentioned, belonging to the said testator.

But now so it is, may it please your honors, the said defendant, Henry Nixon, combining and confederating with the governor and company of the Bank of England, the East India Company, and the South Sea Company, and with various persons to your oratrixes and orator at present unknown, whose names, when discovered, they pray they may be at liberty to insert herein, with proper charges against them as parties defendants hereto, and contriving how to wrong and injure your oratrixes and orator in the premises, has refused to account with your oratrixes and orator for the personal estate and effects of the said testator; and, on the contrary, he threatens and intends forthwith to withdraw from this country the whole of the personal estate and effects of the said testator yet remaining here, and for that purpose to sell and transfer the said several sums of four thousand pounds bank stock, ten thousand pounds three per cent. consolidated bank annuities, three thousand five hundred pounds new four cent. annuities, and six thousand five hundred pounds three and an half per cent. annuities, respectively, standing in the name of the said testator in the books of the governor and company of the Bank of England; and the said Henry Nixon also threatens and intends to apply for and receive, the sum of six thousand pounds, payable at the Bank of England, in respect of the sum of six thousand pounds four per cent. bank annuities not assented to take three and an half per cent. annuities in lieu thereof, pursuant to the act before mentioned in that behalf; and the said Henry Nixon also threatens and intends to sell out and transfer the sum of three thousand pounds East India stock, standing in the name of the said testator in the books of the East India Company, and the sum of five thousand pounds, standing in the name of the said testator in the books of the South Sea Company, and to possess himself of the certificates and other documents in the possession of the said Henry Hugh Hoare, Charles Hoare, and Henry Merick Hoare, of or relating to the inscriptions in the name of the said testator of stock in the French funds, and of actions of the Bank of France; and the said defendants, the governor and company of the Bank of England, the East India Company, and the South Sea Company, intend to permit the several sales and transfers aforesaid to be made by the said Henry Nixon; and the said defendants, the governor and company of the Bank of England, intend to pay to the said Henry Nixon the sum of six thou-

sand pounds hereinbefore mentioned, and the said Henry Hugh Hoare, Charles Hoare, and Henry Merick Hoare intend to deliver over to him the certificates and other documents aforesaid in their possession, unless they the said several parties shall be restrained from so doing by the injunction of this honorable court; and the said Henry Nixon alleges that he ought to be at liberty to sell and transfer the said several funds respectively, and to receive the said sum of six thousand pounds, and to possess himself of the said certificates and other documents, in order that the same, or the produce thereof, may be accounted for by him to the persons claiming the residue of the said testator's personal estate, as his real and personal representatives in America; or at least that regard being had to such claims, he cannot account for or deliver over, or transfer to your oratrixes and orator, or permit them to receive the several funds aforesaid, or the produce thereof, or the aforesaid sum of six thousand pounds, or the certificates and other documents aforesaid, or any part of the personal estate and effects of the said testator in this country, unless he shall be compelled so to do by the decree of this honorable court; but the said defendant does not claim for himself any beneficial right or interest in the residue of the said testator's estate. And your oratrixes and orator charge, that the persons, who claim to be entitled to the residue of the estate of the said testator as his real or personal representatives in America, are numerous, and are unknown to your oratrixes and orator, and they all reside in America, and out of the jurisdiction of this honorable court, though where now particularly your oratrixes and orator are ignorant. To the end, therefore, that the said defendants, Henry Nixon, Henry Hugh Hoare, Charles Hoare, and *Hugh* Merick Hoare, upon their oaths, and the said defendants, the governor and company of the Bank of England, the East India Company, and the South Sea Company, under their respective common seals, may full, true, perfect, and distinct answer make to all and singular the matters aforesaid, to the best and utmost of their knowledge, remembrance, information, and belief, severally and respectively, and that as fully and particularly as if the same were here repeated, and they severally and distinctly interrogated thereto, and more especially that they may, in manner aforesaid, answer and set forth whether Matthias Aspden, deceased, the testator hereinbefore named, was not formerly, and at or about what time, and during what period, a merchant in Philadelphia, in North America, and whether he did not quit that place at the time and upon the occasion hereinbefore in that behalf mentioned, or when else. And whether he did not then, or at any, and what other time, come to and reside in this country. And whether he did not thenceforth, or from some, and what time, become domiciled in this country; and whether he did not continue to be so domiciled until the time of his death; and whether he at any time afterwards went to America, except temporarily, and to transact or settle his affairs, or for some

and what particular purpose; and when and how often, and for what periods respectively, did the said testator afterwards visit and reside in America. And whether he did not once or twice, or how often, go on the continent of Europe; and whether he did not on such occasions always return to this country as to his home, or how otherwise; and whether the said testator did not, and whether or not, during his residence in this country as the place of his domicile, and at or about what times respectively, invest several large sums of money, and what sums, from time to time, in the purchase of bank stock and annuities in the funds of this country; and whether or not also in the funds of the East India and South Sea Companies, and in the French funds; and whether the said testator did not depart this life on the ninth day of August, one thousand eight hundred and twenty-four, or at or about any or what other time; and whether he was not then resident in King street, Holborn, aforesaid; and whether or not domiciled as aforesaid in this country; and whether the said testator, being possessed of such property as herein before in that behalf mentioned, did not duly make his last will and testament in writing, with several codicils thereto, all bearing date respectively the sixth day of December, one thousand seven hundred and ninety-one, or of any and what other date or dates respectively; and whether the said will and codicils are not respectively in the words and figures, or to the purport and effect, hereinbefore in that behalf mentioned and set forth, or to any and what other purport or effect; and whether the said testator did not die without having revoked or altered his said will and codicils; and whether or not without issue; and whether he was ever, and when, and to whom married; and whether George Roberts and Abram Liddon, in the last codicil to his said will named, did not both die in the lifetime of the said testator; and whether the said defendant Henry Nixon was not the president of the bank at Philadelphia at the time of the death of the said testator; and whether the said testator, by the expression in the third codicil to his said will of "the president of the Old bank," did not mean the president of the bank at Philadelphia; and whether the said defendant Henry Nixon did not, soon after the death of the said testator, and at or about the time hereinbefore in that behalf mentioned, or when else, prove the said will and codicils in the proper ecclesiastical court at Philadelphia; and whether he has not also proved the same will and codicils in the prerogative court of the Archbishop of Canterbury; and whether he has not obtained probate thereof from the said court, bearing date the twenty-seventh day of July, one thousand eight hundred and twenty-five, or of any and what other date, and has not thereby become the legal personal representative of the said testator; and whether the said defendant, Henry Nixon, has not possessed himself of all the personal estate and effects of the said testator in America and elsewhere, except in this country, and of what particulars consisting, and of what amount and value re-

spectively; and whether the same were not much, and how much, more than sufficient to pay all the funeral and testamentary expenses, debts, and legacies of the said testator, and what has been the amount of such expenses, debts, and legacies, severally and respectively, and in the whole; and whether, after such payment, there is not remaining a very considerable or some surplus of the said personal estate and effects so possessed by the said defendant, and to what amount; and whether he was not, at the time of his death, possessed of (amongst other descriptions of property) such several sums of stock in the English funds, as hereinbefore in that behalf particularly mentioned; and whether such several sums of stock are not still standing, in the books of the governor and company of the Bank of England, in the name of the said testator; and whether there is not some and what arrear of dividends thereon, respectively; and whether the said testator was not also possessed of such several sums of East India stock and South Sea stock as hereinbefore in that behalf mentioned, or how otherwise; and whether the said testator did not also die possessed of other personal estate and effects in England of various descriptions to a large, or some, and what, amount in the whole; and whether the said testator did not leave John Aspden, hereinbefore named, your oratrixes' late father, or if not, then whom else, his heir-at-law according to the law of England; and whether Thomas Aspden, hereinbefore named, of Simondstone, in Lancashire, was not the common ancestor of both the said testator and the said John Aspden, [and] did not die many years ago, and whether he had not issue twelve children, and whether the eldest of such children was not John Aspden, and whether the said John Aspden did not die, and was not buried, at Saint Paul's, Deptford, in Kent, in January, in the year one thousand seven hundred and fifty-four; and whether he did not leave issue only one son, viz., Andrew Aspden; and whether the said Andrew Aspden did not die, and was not also buried, at Saint Paul's, Deptford, aforesaid, in September, in the year one thousand seven hundred and seventy-one; and whether he did not leave issue the said John Aspden, your oratrixes' late father, his only child and heir-at-law; and whether the name of the father of the said testator was not Matthias Aspden; and whether the said Matthias Aspden, the father, was not the third son of the said Thomas Aspden, the common ancestor, and whether he did not, when resident in America, marry there an American woman whose christian name was Rebecca, and who was the widow of one Roger Hartley; and whether he had not issue by her, some time after the said marriage, an only child, namely, the said testator; and whether the said Matthias Aspden, the father, did not die, in or about the year one thousand seven hundred and sixty-five, in Philadelphia, aforesaid; and whether he did not leave the said testator his only child surviving him; and whether, in manner aforesaid, upon the failure of issue of the said Matthias

Aspden, the father, and of the said Matthias Aspden, the testator, the said John Aspden, your oratrixes' late father, did not, as the grandson and heir-at-law of the said John Aspden, who was the eldest brother of the said Matthias Aspden, the father of the said testator, become, on the death of the said testator, his heir-at-law; and whether, as such heir of the said testator, he did not become entitled, under the will of the said testator, to the residue of the personal estate and effects of the said testator after payment of his funeral and testamentary expenses, debts and legacies; or, if not, why not; and whether the said defendant, although he has proved the will and codicils of the said testator in this country, has not always been, and is not still, resident at Philadelphia, aforesaid, in North America; and whether the said defendant does or not allege that they are, and whether there are or not, in fact, any and what persons in America, who claim to be the heirs-at-law and next of kin of the said testator, according to the laws of the State of Pennsylvania aforesaid, within which the said city of Philadelphia is situated; and whether the laws of the said State as to succession to real and personal estate, are or not such as hereinbefore in that behalf mentioned; and whether, under the will of the said testator, the residue of the estate after payment of his funeral and testamenmentary expenses and debts, and the legacies bequeathed by his said will, did not pass to the said John Aspden, your oratrixes' late father, as the heir-at-law of the said testator, according to the laws of England; and whether the said John Aspden, as the heir-at-law of the said testator, according to the laws of England, was not, at the time of his death, well entitled to the residue of the said testator's estate; and whether the said John Aspden, being so entitled, did not depart this life, at or about the time hereinbefore in that behalf mentioned, or when else; and whether he did not leave your oratrixes his only children and next of kin surviving him, and whether he did not die intestate; and whether your oratrixes and orator have not procured letters of administration of the personal estate and effects of the said John Aspden, their late father, to be granted to them by and out of the prerogative court of the Archbishop of Canterbury, and have not thereby become his legal representatives; and whether your oratrixes and orator have not caused notice of their right, under the will of the said testator, as the personal representatives of the said John Aspden, to be given to the said defendant; and whether the said defendant does not well know or believe, or has not reason to believe, that the said John Aspden was, at the death of the said testator, his heir-at-law according to the laws of England; and whether or not that your oratrixes and orator are the personal representatives of the said John Aspden; and whether the said defendant, Henry Nixon, ought not to have accounted with your oratrixes and orator for the personal estate and effects of the said testator, possessed and received by him, and for his application thereof; and whether he

ought not to have transferred, or caused to be transferred, into their names the several sums of stock hereinbefore mentioned belonging to the said testator; and whether the said defendant has not, and for what reason, refused to account with your oratrixes and orator for the personal estate and effects of the said testator; and whether he has not threatened, and whether he does not intend, forthwith, to withdraw from this country the whole of the personal estate and effects of the said testator yet remaining here; and whether or not, for that purpose, to sell and transfer the said several sums of four thousand pounds bank stock, ten thousand pounds three per cent. consolidated bank annuities, three thousand five hundred pounds new four per cent. annuities, and six thousand five hundred pounds three and a half per cent. annuities, respectively standing in the name of the said testator in the books of the governor and company of the Bank of England; and whether the said defendant has not also threatened, and whether he does not intend to apply for, and receive the sum of six thousand pounds, payable at the Bank of England, in respect of the sum of six thousand pounds four per cent. bank annuities, not assented to take three and a half per cent. annuities in lieu thereof, pursuant to the act before mentioned in that behalf; and whether he has not also threatened, and whether he does not intend, to sell out and transfer the sum of three thousand pounds East India stock, standing in the name of the said testator in the books of the East India company, and the sum of five thousand pounds, standing in the name of the said testator in the books of the South Sea company; and whether the said defendants, the governor and company of the Bank of England, the East India company, and the South Sea company, do not intend to permit the several sales and transfers aforesaid to be made by the said defendant, Henry Nixon, unless they shall be restrained from so doing by the injunction of this honorable court; and whether the said defendants, the governor and company of the Bank of England, do not intend to pay to the said defendant, Henry Nixon, the sum of six thousand pounds hereinbefore mentioned, unless they shall be restrained as aforesaid; and whether the said defendant, Henry Nixon, does, or not, for any and what reason, allege that he ought to be at liberty to sell and transfer the said *the said* several funds respectively, and to receive the said sum of six thousand pounds, in order that the same may be accounted for by him to the persons claiming the residue of the said testator's personal estate as his real and personal representatives in America; and whether he does or not alledge, that regard being had to such claims, he cannot account for, or deliver over, or transfer to your oratrixes and orator, or permit them to receive the several funds aforesaid, or the produce thereof, or the aforesaid sum of six thousand pounds, or any part of the personal estate and effects of the said testator in this country, unless he shall be compelled to do so by the decree of this honorable court;

and whether the persons who claim to be entitled to the residue of the estate of the said testator, as his real or personal representatives in America, are not numerous, and how many in number, and what are their respective names and descriptions; and whether they are not unknown to your oratrixes and orator, and whether they do not all reside in America, and out of the jurisdiction of this honorable court, and where, in particular, is each of such several persons resident. And that the said defendants may answer the premises, and that the said defendant Henry Nixon may set forth an account of the personal estate and effects of the said testator, possessed by him, or by any person or persons by his order, or for his use, and how, and in what manner the same has been disposed of; and that an account may be taken by, and under, the direction of this honorable court, of the personal estate and effects of the said testator, possessed or received by, or come to the hands of the said defendant, Henry Nixon, or of any other person or persons by his order, or for his use; and that such personal estate and effects may be applied, so far as the same has not hitherto been done, in payment of the said testator's funeral and testamentary expenses, debts, and legacies, in a due course of administration; and that the residue of such personal estate and effects may be ascertained; and that the said John Aspden, deceased, your oratrixes' late father, may be declared by this court to have been entitled, under the will of the said testator, as heir at law of the said testator, according to the law of England to such residue, and that such residue may be directed by this court to be paid and transferred to your oratrixes and orator, as the personal representatives of the said John Aspden; and that in the mean time the said defendant, Henry Nixon, may be restrained by the injunction of this honorable court from collecting and receiving any part of the personal estate and effects of the said testator in this country, and particularly from selling or transferring the said sums of four thousand pounds bank stock, ten thousand pounds three per cent. consolidated bank annuities, six thousand five hundred pounds reduced three and a half per cent. bank annuities, and three thousand five hundred pounds new four per cent. annuities, standing in the books of the Governor and Company of the Bank of England in the name of the said testator, and from selling, transferring, or receiving the said sum of six thousand pounds four per cent. annuities, (not assented to take three pounds ten shillings per cent. per annum in lieu thereof, in the manner and at the times required by the said act of the fifth year of his late majesty's reign,) also standing in the books of the said Governor and Company of the Bank of England in the name of the said testator, and from selling or transferring the said sum of three thousand pounds stock, standing in the books of the said East India Company in the name of the said testator, and the said sum of five thousand pounds stock, standing in the books of the said South Sea Company in the name of the said testator, and from receiving the dividends or interest upon any of

the several stocks or funds aforesaid; and that the said defendants the Governor and Company of the Bank of England, and the said defendants the East India Company, and the said defendants the South Sea Company, may be respectively restrained from permitting any transfers of such respective sums to be made; and that the said defendants, the Governor and Company of the Bank of England, may be directed to transfer the said respective stock now standing in the name of the said testator in the said books, and all dividends accrued thereon respectively, into the name of the accountant general of this honorable court, in trust in this cause, and to pay into the bank, to the credit of the accountant general in this cause, the sum of six thousand pounds, payable in respect of the same sum of four per cent. annuities now standing in the name of the said testator, not assented as aforesaid; and that proper directions may be given for the sale of the said stock respectively, standing in the name of the said testator in the respective books of the East India Company and of the South Sea Company; and that the monies arising from such sale may, together with any other monies belonging to the estate of the said testator and paid into court, be laid out in the purchase of stock in the three per cent. consolidated bank annuities, in the name of the said accountant general, in trust in this cause; and that some proper person may be appointed by this honorable court to receive and get in all other the outstanding personal estate and effects of the said testator; and that your oratrixes and orator may have *have* such further or such other relief in the premises as to your honors shall seem meet, and the nature and circumstances of the case may require.

May it please your honors, the premises considered, to grant unto your orators, not only his majesty's most gracious writ of injunction, issuing out of and under the seal of this honorable court, to restrain the said defendant Henry Nixon from selling or transferring the said sums of four thousand pounds bank stock, ten thousand pounds three per cent. consolidated bank annuities, six thousand five hundred pounds three and a half per cent. bank annuities, and three thousand five hundred pounds new four per cent. annuities, and from selling, transferring, or receiving six thousand pounds four per cent. annuities, (not assented to take three pounds ten shillings per cent. per annum in lieu thereof,) or any part thereof, and from selling or transferring the sum of three thousand pounds stock, standing in the books of the said East India Company in the name of the said testator, and the said sum of five thousand pounds stock, standing in the books of the said South Sea Company in the name of the said testator, and from receiving the dividends or interest upon any of the several stocks or funds aforesaid, and from possessing himself of the certificates or other documents in the possession of the said defendants, Henry Hugh Hoare, Charles Hoare, and Henry Merick Hoare, of, or relating to, the inscriptions in the name of the said testator, of stock in the French funds, or of actions

of the Bank of France; and also to restrain the said Governor and Company of the Bank of England, and the said East India Company, and the said South Sea Company, from permitting any such sales or transfers to be made; and that the said defendants, Henry Hugh Hoare, Charles Hoare, and Henry Merick Hoare, may be restrained, by the like injunction, from parting with the certificates and other documents aforesaid; but also his majesty's most gracious writ of distringas, for the appearance of the said defendants, the Governor and Company of the Bank of England, the East India Company, and South Sea Company, in this honorable court; and also his majesty's most gracious writ or writs of subpœna, to be directed to the said defendants, Henry Nixon, Henry Hugh Hoare, Charles Hoare, and Henry Merrick Hoare, and the rest of their confederates when discovered, thereby commanding them, at a certain day, and under a certain pain therein to be limited, personally to be and appear before your honors in this honorable court, and then and there to answer all and singular the premises, to stand to, perform, and abide such order, direction, and decree therein, as to your honors shall seem meet; and your orators shall ever pray, &c.

EDWARD WILBRAHAM.

X'd—T. HAND.

This is the paper exhibit or document referred to by Thomas Hand in his examination as the paper marked N.

THOMAS HAND.

W. COWBURN,
ALFRED KING.

Davis—Filed 7th June, 1831.

The plea of Henry Nixon one of the defendants to the bill of complaint of Jennett, otherwise Jenet Jones, and Thomas Poole and Mary his wife, complainants.

This defendant, by protestation not confessing, or acknowledging all or any of the matters and things in the said complainants' said bill mentioned, to be true in such manner and form as the same are therein and thereby set forth and alledged, doth plead in bar to the said bill, and for plea saith, that John Aspden, in the said bill of complaint alleged to have been the heir at law, according to the law of England, of Mathias Aspden, the testator of the said bill of complaint named, at the time of the death of such testator, and to be since deceased on or about the thirtieth day of July, one thousand eight hundred and twenty-five, exhibited his original bill of complaint in the high court of chancery in this country, which was afterwards amended by an order of the said court, bearing date the twenty-eighth day of May, one thousand eight hundred and twenty-seven, against this defendant, and the other defendants to the said bill of complaint of the said complainants in this court; and also against Samuel Williams and John Stirling, therein named as the

attornies of this defendant, to collect and receive the property and effects of the said testator in England; and Esther Hartly, therein alleged to claim to be entitled to a share of the property of the said testator as one of his next of kin, and to be out of the jurisdiction of the said high court of chancery, thereby stating and charging the same matters and things as are stated and charged in the said bill of complaint of the said complainants in this court, save as to the death of the said John Aspden, and as to the said complainants having become his legal personal representatives; and thereby praying that an account might be taken by the direction of the said high court of chancery, of the personal estate and effects of the said Mathias Aspden, possessed or received by, or come to the hands of, this defendant or any other person or persons by his order or for his use, or got in or possessed, or secured in any way, since the decease of the said Mathias Aspden; and that such personal estate and effects might be applied in payment of the said Mathias Aspden's funeral and testamentary expenses, and debts and legacies, in a due course of administration, and that the residue of such personal estate and effects might be ascertained; and that the said complainant, John Aspden, might be declared by the said court of chancery, to be entitled, upon the true construction of the will of the said Mathias Aspden in the said bill of complaint of the said John Aspden set forth as heir of the said testator Mathias Aspden, to such residue, and that such residue might be accordingly directed by the said court of chancery, to be paid to the said complainant, John Aspden; and that, in the mean time, this defendant, and the said defendants Samuel Williams and John Stirling, might be restrained by the injunction of the said court from collecting and receiving any part of the personal estate and effects of the said testator, Mathias Aspden, in this country; and particularly from selling or transferring the sum of four thousand pounds bank stock; ten thousand pounds three pounds per cent. consolidated bank annuities; six thousand five hundred pounds reduced three and a half per cent. bank annuities; six thousand pounds four pounds per cent. annuities, not assented to take three pounds ten shillings per cent. per annum *as* lieu thereof, in the manner and at [the] times required by an act of Parliament of the fifth year of his then majesty King George the Fourth, and three thousand five hundred pounds new four pounds per cent. Bank annuities, then standing in the books of the said governor and company of the Bank of England in the name of the said testator Mathias Aspden, and the sum of three thousand five hundred pounds stock standing in the books of the East India Company in the name of the said testator, and the sum of five thousand pounds stock standing in the books of the South Sea Company in the name of the said testator, and from receiving the dividends or interest thereon respectively; and the monies, securities, and effects, then in the hands of Messieurs Hoare, as bankers of the said testator; and that the governor and company of the Bank of England, and the East

India Company, and the South Sea Company, all of them defendants to the said bill of complaint, in the said high court of chancery, might be respectively restrained from permitting any transfers of such respective sums to be made; and also that the governor and company of the Bank of England might be directed to transfer the said respective stock and annuities then standing in the name of the said testator in their books, and all dividends accrued due thereon respectively, into the name of the accountant general of the said high court of chancery; and also that proper directions might be given for the sale of the said stock, then respectively standing in the name of the said testator, in the respective books of the East India Company and the South Sea Company; and that the monies arising from such sale might, together with any other monies belonging to the estate of the said testator, and paid into the said high court of chancery, be laid out in the purchase of the stock in the three pounds per cent. consolidated bank annuities in the name of the said accountant general of such last mentioned court, in trust in the said cause; and that the said defendants, Henry Hugh Hoare, Charles Hoare, and Henry Merrick Hoare, might be restrained from paying and delivering the monies, securities, and effects of the the said testator in their hands, to this defendant, or the said Samuel Williams and John Stirling; and that the said Henry Hugh Hoare, Charles Hoare, and Henry Merrick Hoare, might be ordered to pay the said money of the said testator in their hands into the said court of chancery. And that the said defendants, Samuel Williams and John Stirling, might be restrained by the injunction of the said court, from remitting any part of the estate and effects of the said testator in this country to this defendant; and that some proper person might be appointed by the said high court of chancery to receive and get in all other the personal estate and effects of the said testator, and for further relief. And this defendant further saith, that by an order of the high court of chancery, bearing date the ninth day of August, one thousand eight hundred and twenty-five, such injunction to restrain the sale and transfer of the said stock and funds, and the receipt of the dividends thereof as hereinafter is mentioned to have been dissolved, was granted; and that by an order, dated the 31st day of July, one thousand eight hundred and twenty-six, made in the said cause in the said high court of chancery, certain moneys, part of the estate of the said Matthias Aspden, were ordered to be paid into court, and the same were accordingly paid into court. And this defendant further saith, that this defendant and the said other defendants to the said bill of complaint in the high court of chancery, except the said Esther Hartley, who was out of the jurisdiction, put in their respective answers to the said bill of complaint of the said John Aspden. And this defendant by his said answer stated amongst other things, that he believed that Matthias Aspden, the testator in the said bill named, was born, in or about the year one thousand seven hundred and fifty-six, at Philadelphia, in North America, being the place of

residence of his parents, that he continued to reside there, and was afterwards engaged in business at Philadelphia as a merchant, with some success, before he was twenty-one years of age, and that upon the breaking out of the war between Great Britain and America, in the year one thousand seven hundred and seventy-six, or some time in that year, being still a minor, he went to England, with what view this defendant was not able from his own knowledge to say, but he believed he went with an impression that the power of Great Britain must soon prevail in putting down the resistance made in America. And that the said testator subsequently came several times to the United States of America, and invested large sums there in the public or Government stock, and on other securities; and that he made his will and the codicils thereto at Philadelphia, the place of his birth, and deposited them in the bank there; but whether after so returning to the United States of America, the said testator went back to England as his home, or only for the purpose of superintending his property there, and whether the said testator did in fact change his domicile, this defendant did not know, and was unable to answer from his belief or otherwise; but that this defendant believed, that the said testator, when in England, considered himself an alien, and as such claimed to have returned the tax from his dividends, while he was absent from England, according to the provisions of the act exempting aliens from the tax, if not resident in England. And this defendant further saith, that the said John Aspden, the complainant in the said cause, in the said high court of chancery, having departed this life, whereby the said suit in such court became abated, the said complainants Jennett, otherwise Jenet Jones, and Thomas Poole and Mary his wife, on or about the eighteenth day of March, one thousand eight hundred and twenty-eight, exhibited their bill of revivor in the said high court of chancery against this defendant, and the other defendants in the said original and amended bill in the said high court of chancery, thereby stating the said proceedings in the said original cause, and the death of the said complainant, John Aspden, intestate, leaving the said complainants, Jenet Jones and Mary Poole, his only children and next of kin; and that the said Jenet Jones and Mary Poole had obtained letters of administration of the goods, chattels, debts, and credits of the said intestate, to be granted to them out of the prerogative court of the archbishop of Canterbury, and thereby praying that the said suit and proceedings, which so became abated as therein and hereinbefore mentioned, might stand revived, and be in the same plight and condition as the same were in at the time of the death of the said John Aspden. And this defendant further saith, that the said suit was afterwards duly revived, and that this cause being at issue, came on to be heard before his honor, the vice chancellor of England, on the seventeenth day of July, one thousand eight hundred and thirty, when his honor was pleased to order and decree, that the injunction awarded in the original cause of Aspden against Nixon, pursuant to an order made in the said cause, bearing

date the ninth day of August, one thousand eight hundred and twenty-five, to restrain the defendants Samuel Williams and John Stirling from selling or transferring the four thousand pounds bank stock, ten thousand pounds three pounds per cent. consolidated bank annuities, six thousand five hundred pounds three pounds ten shillings per cent. reduced annuities, and six thousand pounds bank four pounds per cent. annuities, not assented to, (the said six thousand five hundred pounds and six thousand pounds in the said injunction stated by mistake as twelve thousand five hundred pounds reduced three pounds ten shillings per cent. annuities,) and three thousand five hundred pounds new four pounds per cent. annuities; and the said last named defendants to be restrained from selling or transferring the said three thousand pounds East India stock, and five thousand pounds South Sea stock; and that the said defendants Samuel Williams and John Stirling should be in like manner restrained from receiving any dividends due or to become due on the said bank annuities and stocks; respectively, save and except the dividends then already due on the said East India and South Sea stocks; and that the said defendants, the Governor and Company of the Bank of England, should be also restrained from making or permitting to be made any transfer or sale of the said bank annuities and stocks, and from paying any dividends thereon, and that the said defendants, the East India Company, should be in like manner restrained from making or permitting to be made any sale or transfer of the three thousand pounds East India stock, and that the said defendants, the South Sea Company, should be in like manner restrained from making or permitting to be made any transfer or sale of the five thousand pounds South Sea stock, and that the said defendants, the East India Company, and the South Sea Company, should be also in like manner restrained from paying any future dividends to accrue due upon the said East India stock and South Sea stock, respectively, until the defendants should fully answer the said bill, or the said court should make other order to the contrary should be dissolved; and that the sum of two hundred and twenty-eight pounds one shilling and eleven pence cash in the bank, placed to the credit of the cause Aspden against Nixon, and for the purposes aforesaid, the accountant general of the said court was to draw on the bank according to the form prescribed by the act of Parliament, and the general rules and orders of the court in that case made and provided; and that the said plaintiffs' said bill should stand dismissed out of the said court with costs, to be taxed by the master of the said court in rotation. And this defendant further saith, that the said decree has been since duly signed and enrolled; and this defendant doth aver, that the said suit in the said high court of chancery, so as aforesaid revived and brought to hearing by the said complainants, Jennett Jones, otherwise Jenet Jones, and Thomas Poole and Mary his wife, against this defendant, and the said other defendants thereto, was for the same matters, and to the same effect, and for

the like relief and purposes, as against this defendant, and the said other defendants thereto, being also defendants to the said complainants' present bill of complaint in this court, as the said complainants do by their said present bill of complaint in this court set forth, and seek relief for as against this defendant, and the said other defendants to the said present bill of complaint of the said complainants in this court; and therefore this defendant doth plead the said decree of the said high court of chancery, signed and enrolled as aforesaid in bar to the said complainants' said present bill of complaint in this honorable court; and humbly prays the judgment of this honorable court, whether he shall be compelled to make any further or other answer thereto; and this defendant prays to be hence dismissed with his reasonable costs in this behalf wrongfully sustained.

S. DUCKWORTH.

X'd—T. HAND.

This is the paper exhibit, or document, referred to by Thomas Hand in his examination as the paper marked P.

THOMAS HAND.

W. COWBURN,
ALFRED KING.

Davis.—Monday, the 4th day of July, 1831.

Between JENNET, otherwise JENET JONES, W. and THOMAS POOLE and MARY his wife, pl'fs, and HENRY NIXON, and others, def'ts. } By bill.

This day being appointed by the court for reading in court the plaintiff's bill, and the plea of the above named defendants, for counsel on both sides to attend; now, upon opening the matter of the said bill and plea, by Mr. Duckworth, of counsel for the said defendant, reading the same, and hearing Thomas Crosby Treslove, esquire, and J. A. F. Simpkinson, esquire, two of his majesty's learned counsel on behalf of the said defendant, Henry Nixon, and William Fuller Boteler, esquire, and Mr. Wilbraham, of counsel on behalf of the plaintiffs; it is ordered by the court, that the said plea be, and the same is hereby allowed, and that the said plaintiff's bill be, and the same is, dismissed out of this court, as to the said defendant Henry Nixon, with costs; and that it be and it is hereby referred to Jeffries Spranger, esquire, one of the masters of this court, to tax the said costs, and that such costs, when taxed, to be paid his solicitor, or clerk in court, by the said plaintiffs to the said defendant Henry Nixon.

DAVIS,
For defendant HENRY NIXON.

In. T. G. *Atty.* H. W. V. 4.
X'— T. HAND.

This is the paper exhibit, or document, referred to by Thomas Hand in his examination as the paper marked Q.

THOMAS HAND.

W. COWBURN,
ALFRED KING.

Davis.—Wednesday, the 6th day of July, 1831.

Between JENNETT, o[the]rwise JENET JONES, and THOMAS POOLE and MARY his wife, plff's,
and
HENRY NIXON, HENRY HUGH HOARE, CHARLES HOARE, and HENRY MERRICK HOARE, and the Governor and Company of the Bank of England, the United Company of Merchants trading to the East Indies, and the Governor and Company of Merchants trading to the South Seas, and other parts of America, and for encouraging the fishery, def'ts. } By Bill.

Whereas, by an order of this court made in this cause, bearing date the 20th day of August, 1830, it is ordered by the court that the said defendant, Henry Nixon, should not sell or transfer the sums of £4,000 bank stock, £10,000 three per centum consolidated bank ann's, and £6,500 reduced £3 10 0 per centum bank ann's, then standing in the books of the defendants, the Governor and Company of the Bank of England, in the name of Matthias Aspden, the tes'tor in the plaintiff's bill named, and that he should not sell, transfer, or receive the sum of £6,000 £4 per centum bank ann's, not assented to take £3 10 0 per centum per annum in lieu th[ere]of, in the manner and at the times required by an act of Parli[a]ment of the 5th year of his late majesty's reign, also standing in the books of the said defendants, the Governor and Company of the Bank of England, in the name of the said tes'tor; and it was also ordered, that the said defendant, Henry Nixon, should not sell or transfer the sum of £3,000 stock then standing in the books of the defendants, the United Company of Merchants, trading to the East Indies, in the name of the said tes'tor, and the sum of £5,000 stock standing in the name of the said tes'tor in the books of the defendants, the Governor and Company of Merchants of Great Britain, trading to the South Seas, and other parts of America, and for encouraging the fishery, and he should not receive the dividends or interest upon any of the several stocks or funds aforesaid; and also, that the said defendant Henry Nixon, should not possess himself of the several certificates and other documents then in the poss'ion of the defendants, Henry Hugh Hoare, Charles Hoare, and Henry Merrick Hoare, of or relating to the inscriptions in the name of the said tes'tor, of stock in the French funds, or of actions of the Bank of France, in the said bill mentioned, or any of them, until he should have appeared to, and

fully answered the said bill, or the further [order] of this court to the contrary; and it was further ordered by the court, that the said defendants, the Governor and Company of the Bank of England, the United Company of Merchants of England, trading to the East Indies, and the Governor and Company of Merchants of Great Britain, trading to the South Seas and other parts of America, and for encouraging the fishery, should not permit the said defendant, Henry Nixon, or any other person, to sell, transfer, or receive the aforesaid several sums of stock and cash, standing in their books, in the name of the said testator, Matthias Aspden, as in the said bill mentioned; and that the said defendants, Henry Hugh Hoare, Charles Hoare, and Henry Merrick Hoare, should not deliver over, or part with, the possession of the aforesaid certificates and other documents of, or relating to, the inscriptions in the name of the said tes'tor of stock in the French funds, or of actions of the Bank of France, until they, the said defendants, the Governor and Company of the Bank of England, the United Company of Merchants trading to the East Indies, the Governor and Company of Merchants of Great Britain, trading to the South Seas, and other parts of America, and for encouraging the fishery; and the said Henry Hugh Hoare, Charles Hoare, and Henry Merrick Hoare, should have answered the said bill, or the further order of this court to the contrary; and it was further ordered by the court, that his majesty's writ or writs of injunction should issue out, and under the seal, of this court, to be directed to the said defendants for the purposes aforesaid, if necessary. Now, upon the motion of J. A. F. Simkinson, esquire, one of his majesty's learned counsel, on behalf of the said defendant Henry Nixon, informs the court that the said defendant Henry Nixon, had filed his plea to the said plaintiffs' bill, and the same upon argument thereof had been allowed, and therefore praying that the said injunction may be dissolved. Upon reading an affidavit of service of notice of this motion, it is ordered by the court, that the said injunction be, and the same is hereby, dissolved.

In. T. G. *Atty.* H. W. V. fo. 12.

DAVIS,
For the defendant HENRY NIXON.

X'—T. HAND.

Depositions of witnesses produced, sworn, and examined, on the sixteenth day of April, in the year of our Lord one thousand eight hundred and forty, at the house of the Incorporated Law society, in Chancery Lane, London, in that part of the United Kingdom of Great Britain and Ireland called England, by virtue of a commission issuing from the circuit court of the United States in the third circuit, to us, William Cowburn and Alfred King, and others, directed; and also in pursuance of an agreement or order, made in the cause Packer vs. Nixon, for the examination of witnesses

This is the paper exhibit, or document, referred to by Thomas Hand in his examination as the paper marked Q.

THOMAS HAND.

W. COWBURN,
ALFRED KING.

Davis.—Wednesday, the 6th day of July, 1831.

Between JENNETT, o[the]rwise JENET JONES, and THOMAS POOLE and MARY his wife, plff's,
and
HENRY NIXON, HENRY HUGH HOARE, CHARLES HOARE, and HENRY MERRICK HOARE, and the Governor and Company of the Bank of England, the United Company of Merchants trading to the East Indies, and the Governor and Company of Merchants trading to the South Seas, and other parts of America, and for encouraging the fishery, def'ts. } By Bill.

Whereas, by an order of this court made in this cause, bearing date the 20th day of August, 1830, it is ordered by the court that the said defendant, Henry Nixon, should not sell or transfer the sums of £4,000 bank stock, £10,000 three per centum consolidated bank ann's, and £6,500 reduced £3 10 0 per centum bank ann's, then standing in the books of the defendants, the Governor and Company of the Bank of England, in the name of Matthias Aspden, the tes'tor in the plaintiff's bill named, and that he should not sell, transfer, or receive the sum of £6,000 £4 per centum bank ann's, not assented to take £3 10 0 per centum per annum in lieu th[ere]of, in the manner and at the times required by an act of Parli[a]ment of the 5th year of his late majesty's reign, also standing in the books of the said defendants, the Governor and Company of the Bank of England, in the name of the said tes'tor; and it was also ordered, that the said defendant, Henry Nixon, should not sell or transfer the sum of £3,000 stock then standing in the books of the defendants, the United Company of Merchants, trading to the East Indies, in the name of the said tes'tor, and the sum of £5,000 stock standing in the name of the said tes'tor in the books of the defendants, the Governor and Company of Merchants of Great Britain, trading to the South Seas, and other parts of America, and for encouraging the fishery, and he should not receive the dividends or interest upon any of the several stocks or funds aforesaid; and also, that the said defendant Henry Nixon, should not possess himself of the several certificates and other documents then in the poss'ion of the defendants, Henry Hugh Hoare, Charles Hoare, and Henry Merrick Hoare, of or relating to the inscriptions in the name of the said tes'tor, of stock in the French funds, or of actions of the Bank of France, in the said bill mentioned, or any of them, until he should have appeared to, and

fully answered the said bill, or the further [order] of this court to the contrary; and it was further ordered by the court, that the said defendants, the Governor and Company of the Bank of England, the United Company of Merchants of England, trading to the East Indies, and the Governor and Company of Merchants of Great Britain, trading to the South Seas and other parts of America, and for encouraging the fishery, should not permit the said defendant, Henry Nixon, or any other person, to sell, transfer, or receive the aforesaid several sums of stock and cash, standing in their books, in the name of the said testator, Matthias Aspden, as in the said bill mentioned; and that the said defendants, Henry Hugh Hoare, Charles Hoare, and Henry Merrick Hoare, should not deliver over, or part with, the possession of the aforesaid certificates and other documents of, or relating to, the inscriptions in the name of the said tes'tor of stock in the French funds, or of actions of the Bank of France, until they, the said defendants, the Governor and Company of the Bank of England, the United Company of Merchants trading to the East Indies, the Governor and Company of Merchants of Great Britain, trading to the South Seas, and other parts of America, and for encouraging the fishery; and the said Henry Hugh Hoare, Charles Hoare, and Henry Merrick Hoare, should have answered the said bill, or the further order of this court to the contrary; and it was further ordered by the court, that his majesty's writ or writs of injunction should issue out, and under the seal, of this court, to be directed to the said defendants for the purposes aforesaid, if necessary. Now, upon the motion of J. A. F. Simkinson, esquire, one of his majesty's learned counsel, on behalf of the said defendant Henry Nixon, informs the court that the said defendant Henry Nixon, had filed his plea to the said plaintiffs' bill, and the same upon argument thereof had been allowed, and therefore praying that the said injunction may be dissolved. Upon reading an affidavit of service of notice of this motion, it is ordered by the court, that the said injunction be, and the same is hereby, dissolved.

In. T. G. *Atty.* H. W. V. fo. 12.

DAVIS,
For the defendant HENRY NIXON.

X'—T. HAND.

Depositions of witnesses produced, sworn, and examined, on the sixteenth day of April, in the year of our Lord one thousand eight hundred and forty, at the house of the Incorporated Law society, in Chancery Lane, London, in that part of the United Kingdom of Great Britain and Ireland called England, by virtue of a commission issuing from the circuit court of the United States in the third circuit, to us, William Cowburn and Alfred King, and others, directed; and also in pursuance of an agreement or order, made in the cause Packer vs. Nixon, for the examination of witnesses

in a certain cause depending in the said court, wherein Samuel Packer is plaintiff, and Henry Nixon, executor of Matthias Aspden, is defendant.

James Robinett Scruby, clerk to Messieurs Milne, Parry, Milne and Morris, of the Inner Temple, London, solicitors, aged thirty years, being produced, sworn, and examined, on behalf of the complainants, Janet Jones and Mary Poole, of London, admitted as parties in the above causes under the mandate of the Supreme Court of the United States, deposeth as follows:

To the first interrogatory. I do not know any of the parties, complainants or defendant, in the title to the interrogatories, or any or either of them. I did not know the testator, Matthias Aspden, or John Aspden, of London, deceased; and I do not know his daughters, the said Janet Jones and Mary Poole.

To the second interrogatory. I have looked at the several paper writings produced on behalf of the said complainants, Janet Jones and Mary Poole, marked respectively with the letters A, B, C, D, E, F, G, H, I, K, L, (no paper writing being produced in answer to the interrogatory proposed on behalf of the above named defendant under this commission,) but further to this interrogatory this deponent cannot depose.

To the third interrogatory, this deponent cannot depose.

To the fourth interrogatory, this deponent cannot depose.

To the fifth interrogatory, this deponent cannot depose.

To the sixth interrogatory, this deponent cannot depose.

To the seventh interrogatory, this deponent cannot depose.

To the eighth interrogatory, this deponent cannot depose.

To the ninth interrogatory, this deponent cannot depose.

To the tenth interrogatory. The paper writings, produced on the part of the complainants, Janet Jones and Mary Poole, before the commissioners, (no paper writings being produced on the part of the defendant, as aforesaid,) and mentioned, in the answer to the interrogatory in chief, as being marked with the letters A, B, C, D, E, F, G, H, I, K, and L, are whole, entire, complete, and perfect copies of all the records of proceedings in the high court of chancery, from which they are respectively taken in the original and revived suit therein referred to, this deponent having severally examined the said paper writings with the original records. I have enquired of the proper officer of the court of chancery for other records, or matters recorded, or in the nature of records, in the said court in the said suit, but I have not found or discovered any such, nor do I believe any such exist. I have not made any examination or inquiry for records, or matters recorded in any other court.

To the eleventh interrogatory, the deponent cannot depose.

JAMES R. SCRUBY.

W. COWBURN,
ALFRED KING.

Samuel Frederick Milford, of Lincoln's Inn, in the county of Middlesex, esquire, barrister at law, aged forty-two years, being produced, sworn, and examined, on behalf of the complainants, Janet Jones and Mary Poole, of London, deposeth as follows:

To the first interrogatory. I do not know any of the parties, complainants or defendant, in the title to the interrogatories, or any or either of them. I did not know the testator, Matthias Aspden, or John Aspden, of London, deceased; and I do not know his daughters, the said Janet Jones and Mary Poole.

To the second interrogatory. I have looked at the several paper writings, produced on behalf of the said complainants, Janet Jones and Mary Poole, marked respectively with the letters A, B, C, D, E, F, G, H, I, K, and L, (no paper writings being produced in answer to the interrogatories proposed on behalf of the above named defendant, under this commission,) in the original and revived suit in the high court of chancery, in such paper writings referred to, wherein John Aspden is plaintiff, Henry Nixon, Esther Hartley, Samuel Williams, John Stirling, the governor and company of the Bank of England, the honorable East India company, the honorable South Sea company, Henry Hoare, Henry Hugh Hoare, Charles Hoare, and Henry Merrick Hoare, are defendants, by original bill; and wherein Jennet (otherwise Jenet) Jones, and Thomas Poole and Mary his wife, plaintiffs; and the the said Henry Nixon, Esther Hartley, Samuel Williams, John Stirling, the governor and company of the Bank of England, the honorable East India company, the honorable South Sea company, Henry Hoare, Henry Hugh Hoare, Charles Hoare, and Henry Merrick Hoare, are defendants, by bill of revivor, there was a discussion, at the hearing of the cause before the vice chancellor of the high court of chancery, whether a reference should be made to one of the masters of the court, to ascertain who was the heir at law of the testator, Matthias Aspden, in the pleadings of the cause named, which was the only point urged on behalf of the plaintiffs, when his honor the vice chancellor decided, that the said bill should be dismissed with costs, stating, as the ground for his judgment, that no evidence had been gone into to prove who was the heir at law on behalf of the plaintiffs, and the bill was dismissed accordingly; and his honor the vice chancellor did not determine or decide upon the pedigree of John Aspden, of London, deceased, or of his daughters, Janet Jones and Mary Poole, or any or either of them, or upon their connexion with relationship to the said Matthias Aspden, the testator above named, or upon the merits of the claims set forth in their original bill and bill of revivor, or any or either of them, or upon the proper construction of the will of the said Matthias Aspden, the testator, or who was the person or persons designated therein as his heir at law.

To the third interrogatory. No evidence was given in the said suit, in the high court of chancery, to which the paper writings

above referred to relate, to the knowledge or belief of me, the deponent, nor were any depositions taken or prepared in the said suit, to the knowledge or belief of me, the deponent; nor was any evidence given, proving or intending to prove the pedigree of the said John Aspden, of London, deceased, or that of his daughters Janet Jones and Mary Poole, or their relationship to the said testator, Matthias Aspden, to the knowledge or belief of me, the deponent.

To the fourth interrogatory. To the best of the knowledge and belief of me, the deponent, no depositions or evidence was read or given to the said high court of chancery, in the said suit, in the said paper writings produced, mentioned, and referred to.

To the fifth interrogatory. That the claims of the said John Aspden, of London, deceased, as stated in the paper writings aforesaid, have not been gone into in the said court of chancery, save as to the discussion before deposed to by me, the deponent, which took place at the hearing of the cause; and that the decision of his honor, the vice chancellor, at the hearing of the said cause, as before deposed to, was not made on any preliminary objection, but was a final decision for want of evidence in support of the plaintiff's claim.

To the sixth interrogatory. The deponent cannot depose.

To the seventh interrogatory. The deponent cannot depose.

To the eighth interrogatory. The reason why no evidence was given to the said court of chancery to support the claims stated in the original bill and bill of revivor was, to my belief, that the solicitor of the said plaintiffs was not in sufficient funds to procure evidence of the pedigree to support the said claims, I, the deponent, having been informed, and which information I verily believe to be true, that the said solicitor of the said plaintiffs shortly afterwards died in insolvent circumstances, and without paying me, the deponent, the fees upon the briefs which I held as counsel for the said plaintiffs.

To the ninth interrogatory. The cause and ground of the dismissal of the original bill and bill of revivor, in the said paper writings mentioned, and referred to by his honor the vice chancellor, was, that no evidence had been gone into to prove who was the heir-at-law, as before deposed to, and such dismissal was not decreed upon the determination of the rights of the parties complainant and defendants therein, or upon the rules of practice adopted by the said court of chancery, nor was such dismissal made by the said court of chancery in order that the funds and property in question should be remitted to America to be distributed under the direction of some competent tribunal there, but entirely because the parties complainant had not gone into any evidence to support their claims.

To the tenth interrogatory. The deponent cannot depose.

To the eleventh interrogatory. I was one of the counsel for the plaintiffs in the original and revived suit in the court of chancery mentioned in my answers to the preceding interrogatories, and I advised the said complainant's solicitor, who was a Mr. Gregson,

that the suit would be dismissed, if he did not prove the plaintiff to be the heir-at law of the testator, Mr. Aspden; but the said Mr. Gregson (as I believe on account of his want of funds) did not follow my advice, but expressed his hopes and belief, that the vice chancellor would refer it to one of the masters of the court, to ascertain who was the heir-at-law of the said testator; that very shortly before the cause was called on to be heard before the vice chancellor, the counsel who was employed with me (and who, from seeing the endorsement on my brief, now produced and shewn to me, marked with the letter Z, I believe to have been Sir Edward Sugden) also advised the said Mr. Gregson not to appear when the cause should be called on, but to allow the same to be struck out of the paper; but the advice was disregarded. I understand the law and practice of the court of chancery to be, that when a cause is dismissed for want of prosecution, or is dismissed when called on in consequence of the plaintiffs not appearing, that it is competent for the plaintiff to file another bill for the same matter; but when it is heard, and a decree made on the hearing, dismissing the bill, that decree may be pleaded to a fresh suit for the same purpose. I have read the words and figures, "Bill dismissed with costs, S. F. Milford, July 17th, 1830," written on the said paper writing, marked Z, produced to me as aforesaid; they are my writing, and I have no doubt that the said paper writing, marked Z, was the brief I held on the hearing of the said cause before the vice chancellor.

SAM'L FRED'K MILFORD.

W. COWBURN,
ALFRED KING.

Depositions of witnesses produced, sworn, and examined on the eighteenth day of April, in the year of our Lord one thousand eight hundred and forty, at the house of the Incorporated Law society, in Chancery Lane, London, in that part of the united kingdom of Great Britain and Ireland called England, by virtue of a commission issuing from the circuit court of the United States, in the third circuit, to us, William Cowburn, and Alfred King, and others, directed; and also in pursuance of an agreement or order made in the cause Packer vs. Nixon, for the examination of witnesses in a certain cause depending in the said court, wherein Samuel Packer is plaintiff, and Henry Nixon, executor of Matthias Aspden, is defendant.

W. COWBURN,
ALFRED KING.

Thomas Hand, clerk to Messieurs Milne, Parry, Milne and Morris, of the Inner Temple, London, solicitors, aged twenty years, being produced, sworn, and examined on behalf of the complainants, Janet Jones and Mary Poole, of London, admitted as parties in the above cause, under the mandate of the Supreme Court of the United States, deposeth as follows:

To the first interrogatory. I do not know the parties, complainants or defendant, in the title to the interrogatories named, or any or either of them. I did not know the testator Matthias Aspden, or the intestate John Aspden, of London, deceased. I do not know his daughters, the said Janet Jones and Mary Poole.

To the second interrogatory. I have looked at the several paper writings produced on behalf of the said complainants, Janet Jones and Mary Poole, marked respectively with the letters M, N, O, P, Q, (no paper writings being produced in answer to the interrogatory proposed on behalf of the above named defendant under this commission;) but further to this interrogatory this deponent cannot depose.

To the third interrogatory. This deponent cannot depose.

To the fourth interrogatory. This deponent cannot depose.

To the fifth interrogatory. This deponent cannot depose.

To the sixth interrogatory. This deponent cannot depose.

To the seventh interrogatory. This deponent cannot depose.

To the eighth interrogatory. This deponent cannot depose.

To the ninth interrogatory. This deponent cannot depose, having no knowledge of the matters enquired after, save what he has derived from reading the several paper writings by him before deposed to.

To the tenth interrogatory. The paper writings produced on the part of the complainants, Janet Jones and Mary Poole, before the commissioners, (no paper writings being produced on the part of the defendant as aforesaid,) and mentioned in the answer to the interrogatory in chief as being marked with the letters M, N, O, P, Q, are whole, entire, complete, and perfect copies of all the records of proceedings in the court of exchequer from which they are taken in the suit therein referred to; I, the deponent, having severally examined the said paper writings with the original records; I have enquired of the proper officer of the court of exchequer for other records or matters recorded in the said court of exchequer in the said suit, but I have not found or discovered any such, nor do I believe any such exist; I have not made any examination or inquiry for records or matters recorded in any other court.

To the eleventh interrogatory. The deponent cannot depose.

THOMAS HAND.

W. Cowburn,
Alfred King.

Michael Denney, of No. 5, Cook's Row, Saint Pancras, Old Road, in the county of Middlesex, solicitor's clerk, aged about twenty-seven years, being produced, sworn, and examined on behalf of the complainants, Janet Jones and Mary Poole, of London, admitted as parties in the above cause, under the mandate of the Supreme Court of the United States, deposeth as follows:

To the first interrogatory. I do not know the parties, complain-

ants or defendant, in the title to the interrogatories, or any or either of them. I did not know the testator Matthias Aspden, or John Aspden, of London, deceased. I do know his daughters Janet Jones and Mary Poole, having seen them about ten years ago.

To the second interrogatory. The deponent cannot depose.

To the third interrogatory. The deponent cannot depose.

To the fourth interrogatory. The deponent cannot depose.

To the fifth interrogatory. The deponent cannot depose.

To the sixth interrogatory. The deponent cannot depose.

To the seventh interrogatory. The deponent *cannot* cannot depose.

To the eighth interrogatory. The deponent cannot depose.

To the ninth interrogatory. The deponent cannot depose.

To the tenth interrogatory. The deponent cannot depose.

To the eleventh interrogatory. I have looked at the paper writing marked Z, produced to me at the time of this my examination, the greater part of which is in my handwriting. I was a clerk in the employ of Mr. Gregson, of the Inner Temple, London, the solicitor for the plaintiffs named in the said paper writing in July, one thousand eight hundred and thirty. Mr. Gregson is dead. Prior to the cause named in the said paper writing coming on for hearing, a negotiation was carried on by the said Mr. Gregson as the solicitor for and on behalf of the plaintiffs in the revived suit with a Mr. Dugdale, a gentleman residing in Lancashire, for an advance of money to the extent of one thousand pounds, as I now best recollect, to enable the said Mr. Gregson to procure the necessary evidence to establish the pedigree of the plaintiffs named in the revived suit mentioned in the said paper writing, but Mr. Dugdale having required security for repayment, and the plaintiffs being unable to give security, the negotiation went off; and the plaintiffs being very poor, and not having the means of procuring the necessary evidence, the cause was heard without any evidence being gone into in support of the pedigree, and was dismissed with costs, as I was informed by the said Mr. Gregson; and which information I believe to be true, and as I have now ascertained to be the fact, by the endorsement of Mr. Milford, one of the plaintiff's counsel, on the paper writing produced to me, and which I have before deposed to.

M. DENNEY.

W. COWBURN.
ALFRED KING.

Robert James Kentish, of No. 3, Albion Cottages, Havil street, Camberwell, in the county of Surrey, clerk to a solicitor, aged thirty-seven years, being produced, sworn, and examined on behalf of the complainants, Janet Jones and Mary Poole, of London, admitted as parties in the above cause, under the mandate of the Supreme Court of the United States, deposeth as follows:

To the first interrogatory. I do not know the parties complainants or defendant in the title to the interrogatories, or any or either of them. I did not know the testator Matthias Aspden, or John Aspden, of London, deceased. I do know his daughters the said Janet Jones and Mary Poole, and knew them between the years 1828 and 1830, having seen them at that period.

To the second interrogatory. The deponent cannot depose.

To the third interrogatory. The deponent cannot depose.

To the fourth interrogatory. The deponent cannot depose.

To the fifth interrogatory. The deponent cannot depose.

To the sixth interrogatory. The deponent cannot depose.

To the seventh interrogatory. The deponent cannot depose.

To the eighth interrogatory. The deponent cannot depose.

To the ninth interrogatory. The deponent cannot depose.

To the tenth interrogatory. The deponent cannot depose.

To the eleventh interrogatory. I have looked at the paper writing marked Z, produced to me at the time of this my examination. I was a clerk in the employ of Mr. Gregson, of the Inner Temple, London, the solicitor for the plaintiffs in the revived suit named in the said paper writing during a great part of the time the said suit was in progress. Mr. Gregson is since dead. Janet Jones and Mary Poole, the plaintiffs in the revived suit, were in limited circumstances, so as not to enable them to make sufficient advances to the said Mr. Gregson for carrying on the suit in the said paper writing referred to, and I remember that a Mr. Dugdale, a gentleman residing in Lancashire, made some advances to Mr. Gregson to carry on the suit; but afterwards declined (though under what particular circumstances I cannot now recollect) to make any further advances. After this I saw the plaintiffs, Janet Jones and Mary Poole, at their residence in Old street, and communicated to them, at the request of Mr. Gregson, that Mr. Dugdale had declined to make further advances; that Mr. Gregson himself was unable to make advances, and that if he was not put in funds the suit must fall to the ground. To my knowledge no advances were subsequently made either by Mr. Dugdale or the plaintiffs, and I well recollect that the cause was afterwards heard, as I was informed and believe, and dismissed with costs, no evidence whatever having been gone into in support of the plaintiffs' claim; and I have also ascertained the fact of the hearing of the said cause, and its dismissal, by the endorsement on the said paper writing before deposed to, made by Mr. Milford, one of the counsel for the plaintiffs on the hearing of the said cause.

W. COWBURN, R. J. KENTISH.
ALFRED KING.

This is the paper exhibit, or document, referred to by James Robinett Scruby in his examination as the paper marked A.

W. COWBURN,
ALFRED KING.

This is the paper exhibit, or document, referred to by Samuel Frederick Milford in his examination as the paper marked A.

SAM'L FRED'K MILFORD,
W. COWBURN,
ALFRED KING.

30th July, 1825—
VESEY, by TURTON.

To the right honorable John, earl of Eldon, lord high chancellor of Great Britain.

Humbly complaining sheweth unto your lordship, your orator John Aspden, of Old street, in the parish of Saint Luke, in the city of London, gentleman, the heir at law of Matthias Aspden, (the testator hereinafter named,) that the said Matthias Aspden, of King street, Holborn, London, deceased, was formerly a merchant in Philadelphia, in North America, but quitted that place when the war broke out between this country and America in the year 1776, and came to, and resided in, this country until the time of his death, hereinafter mentioned, except he went to America after the conclusion of the said war, and at one or two different times, but only to transact or settle his affairs there, and always returned to this country as to his home after such affairs were settled; and the said Matthias Aspden, during his residence in this country as the place of his domicil, invested large sums of money in the purchase of stock and bank annuities in the funds of this country, and also in the funds of the East India and South Sea companies; and the said Matthias Aspden departed this life in the month of August, 1824, being then resident in King street, Holborn aforesaid, and domiciled in this country. And your orator further sheweth unto your lordship, that the said Matthias Aspden in his lifetime, and at the time of making his will hereinafter mentioned, was possessed of very considerable property, and in particular of considerable property in the English and American funds, and of various other kinds of personal estate and effects to a very considerable amount in the whole; and in his lifetime he duly made and executed his last will and testament in writing, with three codicils thereto, bearing date the 6th day of December, 1791, and which are in the words and figures *of* following, videlicit:

"These are to certify, that I do hereby annul and revoke all my former wills, giving and bequeathing my estate, real and personal, to my heir at law, first paying all my just debts and funeral expenses, and the following legacies: first, to each of the children of my half brother Benjamin Hartley, deceased, that may be alive at my death, the sum of £100 to each, Pennsylvania currency, and to my half sister Bersheba Zare, wife of Elnathan Zare, the sum of £400, Pennsylvania currency, both the above living, or did live, near Haddonfield, and to my half brother Roger Hartley, living at present in Lancaster county, the sum of £300 of the like currency.

Witness my hand, this 6th day of Dec'r, 1791. Matthias Aspden, Philadelphia.

MATTHIAS ASPDEN."

"Least any question should arise about the legitimacy of my birth, it is my will that my estate, real and personal, should go to the party who would be my lawful heir in case there might arise no doubt on that head. It is firmly believed by, and from, the best information, that my birth was after marriage.

PHILADELPHIA, 6*th December*, 1791.

I do further give £100, currency, to each of the children of my deceased half sister Ann Hinchman, that may be living at my death.

DECEMBER 6*th*, 1791.

The last will of Matthias Aspden.

I do hereby appoint my friends, Mr. George Roberts and Mr. Abram Lidden, with the president of the Old bank at the time being, to be my executors to this my last will.

MATTHIAS ASPDEN.

NOTE.—My property in England is as follows: £12,500 in the four per cent. stock, £3,000 in the five per cent. stock, £1,800 in the three per cent. stock," as in and by the probate of the said will when the same shall be produced to this honorable court, reference being thereunto had will appear.

And your orator further sheweth unto your lordship, that the said testator afterwards departed this life on the 9th day of August, 1824, without having revoked or altered his said will, and without issue, he having never been married. And your orator further sheweth unto your lordship, that the said George Roberts and Abram Liddon both died in the lifetime of the said testator, and that the president of the Bank of Philadelphia, at the time of the death of the testator, was Henry Nixon, esq'r; and the said testator, by the expressions in the third codicil to his said will, "president of the Old bank," meant the President of the Bank of Philadelphia; and the said Henry Nixon, soon after the death of the said testator, (viz, on the 9th of November last,) proved the said will in the proper ecclesiastical court at Philadelphia, and has lately also proved the same will in the proper ecclesiastical court in this country, and has obtained probate thereof from the prerogative court of the archbishop of Canterbury, (bearing date the 27th of July now instant,) and thereby become the legal personal representative of the said testator; and the said Henry Nixon hath possessed himself of the personal estate and effects of the said testator in America, and elsewhere, except in this country, and which are much more than sufficient to pay and satisfy all the funeral and testamentary expenses, debts, and legacies, of the said testator, and also to leave a very considerable surplus. And your orator further sheweth unto

your lordship, that the said testator was, at the time of his death, (among other descriptions of property,) possessed of property in the English funds, that is to say: £4,000 bank stock, £10,000 three per cent. consolidated bank annuities, £12,500 reduced three and a half per cent. bank annuities, and £3,500 new four per cent. bank annuities, and such stock and annuities are still standing in the books of the Governor and Company of the Bank of England, in the name of the said testator, with an arrear of dividends thereon respectively; and the said testator also was possessed of East India stock, and also of South Sea stock, to a considerable amount, that is to say: £3,000 East India stock, and £5,000 South Sea stock; and the said testator died also possessed of other personal estate and effects, of various descriptions, to a large amount in the whole, and, particularly, he had money in the hands of Messrs. Hoare, of Fleet street, London, his bankers, to the amount of £790 3 5, and also securities and other effects. And your orator further sheweth unto your lordship, that the said testator left your orator his heir at law; and, as evidence thereof, your orator sheweth that Thomas Aspden, of Simondstone, in Lancashire, was the common ancestor of both the said testator and your orator, and died many years ago, (being before the birth of your orator, who is now aged 85 years,) having had issue 12 children, the eldest of whom was John Aspden, who died and was buried at Deptford, in Kent, in the year 1754, leaving issue only one son, vid't, Andrew Aspden, who died, and was also buried at Deptford in the year 1771, leaving issue your orator, his only child and heir at law. And your orator further sheweth unto your lordship, that the name of the father of the said testator was Matthias Aspden, who was the third son of the said Thomas Aspden, the common ancestor; and that the said Matthias Aspden, the father, being resident in America, married there an American woman whose christian name was Rebecca, and had issue by her some time after the said marriage an only child, vid't, the said testator; and the said Matthias Aspden, the father, died in or about the year 1765, in Philadelphia aforesaid, leaving the said testator his only lawful issue him surviving; so that, upon the failure of issue of the said Matthias Aspden the father, and of the said Matthias Aspden the testator, your orator, as the grandson and heir at law of the said John Aspden, who was the eldest brother of the said Matthias Aspden the testator, became, on the death of the said testator, his heir at law. And your orator further sheweth unto your lordship, that he is advised, and submits that, as such heir of the said testator, he is entitled, under the aforesaid will of the said testator, to the residue of the personal estate and effects of the said testator, after payment of his funeral and testamentary expenses, debts, and legacies, and which residue amounts to a very large sum. And your orator further sheweth unto your lordship, that the said Henry Nixon (although he has proved the said will in this country) always has been, and still is, resident at Phi-

ladelphia aforesaid, in North America, and he has signed and sent over to Samuel Williams and John Sterling, both of the city of London, merchants, a general power of attorney to collect, get in, and receive, all the personal estate and effects of the said testator in this country, with a direction to them to remit to him the said Henry Nixon, in America, all such personal estate and effects of the said testator, when and as soon as they are received by them, the said Samuel Williams and John Sterling; and the said Henry Nixon threatens and intends to misapply such personal estate and effects, and instead of accounting with and paying to your orator the residue of the said testator's personal estate and effects (as the residuary legatee under the said will) to pay and apply the the same in a manner which is in direct opposition to the said will. And your orator further sheweth unto your lordship, that he has caused notice of his aforesaid rights under said will, to be given to the said Samuel Williams and John Sterling, and has requested them not to receive or remit such personal estate and effects of the said testator to the said Henry Nixon, but the said Samuel Williams and John Sterling threaten and intend, under the said power of attorney, to sell out the said bank stock and bank annuities, and likewise the said East India stock and the said South Sea stock, and also to receive the money, securities, and effects of, and belonging to, the said testator, at the said Messrs. Hoare, his bankers, and all the other personal estate and effects of the said testator in this country, and to remit the produce of the said stocks and annuities, and what he shall so receive in respect of the other personal estate and effects of the said testator to the said Henry Nixon; and the said governor and company of the Bank of England, and the East India Company and the South Sea Company, intend respectively to permit the aforesaid respective transfers of such respective quantities of stock and annuities to be made by the said Samuel Williams and John Sterling, unless they are prevented from so doing by the order of this honorable court, although they have been respectively applied to by your orator not to permit such respective transfers; and the said Messrs. Hoare likewise intend to pay over, and part with, to the said Samuel Williams and John Sterling, the money, securities and effects of the said testator in their hands, unless restrained by the order of this honorable court from so doing. And your orator further sheweth unto your lordship, that it is alleged by the said Henry Nixon, (and which your orator believes to be the case,) that there are certain persons in America who claim to be next of kin to the said testator, as being brothers or sisters of his half blood, or as being descended from them, and in that character claim to be entitled, under the said will of the said testator, to the residue of his personal estate and effects; but your orator further sheweth, that (if such be the case,) your orator is unable to set forth whether such brother or sisters of the half blood (if any such) are living or dead, or if dead, whether they have left any children or child, or who are, or is, their personal representatives or representative. And

your orator further sheweth unto your lordship, that your orator is advised, and humbly submits, that upon the true construction of the said will of the said testator, the next of kin of the said testator are not entitled under the same will to take the residue of the personal estate and effects of the said testator, but that your orator is entitled to the same, under the said will, as the heir at law of the said testator. And your orator further sheweth unto your lordship, that under such circumstances, your orator was in hopes that the said Henry Nixon would have accounted with your orator for the residue of the personal estate of the said testator, after payment of his funeral and testamentary expenses, debts, and legacies; but now so it is, may it please your lordship, that the said Henry Nixon, combining and confederating with the said defendants, Samuel Williams and John Sterling, and with the said governor and company of the Bank of England, and with the honorable company of merchants trading to the East Indies, and with the honorable company of merchants trading to the South Seas, and with the said Messrs. Henry Hoare, Henry Hugh Hoare, Charles Hoare and Henry Merrick Hoare, and to and with divers other persons at present unknown to your orator, but whose names, when discovered, your orator prays may be herein inserted, with appropriate and proper matter, to charge them as parties hereto, and contriving how to injure and oppress your orator in the premises, positively refuses to account with and pay to your orator the residue and effects of the said testator, but threatens and intends to withdraw from this country, by means of his aforesaid agents, the defendants Samuel Williams and John Sterling, all the personal estate and effects of the said testator in this country, and to apply the same contrary to the said will of the said testator; and your orator further charges and submits to this honorable court, that the said defendants, the governor and company of the Bank of England, and the said East India company, and the said South Sea company, ought to be respectively restrained by the order of this honorable court from permitting any transfer to be made by the said defendant, Henry Nixon, or the said defendants, Samuel Williams and John Sterling, of the said respective stock and annuities of the said testator, standing in his name in their respective books, and that the said defendants, Messrs. Hoare, ought likewise to be restrained from parting with the said money securities, and effects of the said testator; and also that the said defendants, the governor and company of the Bank of England, should be ordered to transfer the aforesaid bank stock and bank annuities into the names of the accountant general of this honorable court, in trust in this cause; and also that proper directions should be given for the sale of the aforesaid East India stock and South Sea stock of the said testator, and that the money arising therefrom respectively should be invested in the purchase of 3 per cent. consolidated bank annuities, in the name of the said accountant general in trust in this cause; and also that the said defendants, Messrs. Hoare, should be directed to

pay the money of the said testator in their hands into court, and that the same should be laid out in like manner; and your orator further charges and submits to this honorable court, that some proper person ought to be appointed by this honorable court to receive and get in all the other outstanding estate and effects of the said testator in this country; all which actings, doings, and pretences of the said confederates are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator in the premises. In consideration whereof, and for as much as your orator is remediless in the premises, by the strict rules of the common law, and cannot have adequate relief, except in a court of equity, where matters of this kind are properly cognizable and relievable; to the end, therefore, that (the said Henry Nixon, when he shall come within the jurisdiction of this honorable court) the said Samuel Williams and John Sterling, the said governor and company of the Bank of England, the said East India company, the said South Sea company, and the said Messrs. Henry Hoare, Henry Hugh Hoare, Charles Hoare, and Henry Merrick Hoare, and their confederates, when discovered, may, upon their several and respective oaths, according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, a full, true, and direct and perfect answer make to all and singular the matters aforesaid, and that as fully as if the same were here repeated; and they particularly interrogated thereto; and more especially that the said defendants may, in manner aforesaid, answer and set forth, whether the said testator, Matthias Aspden, was not formerly a merchant in Philadelphia, in North America, or at some and what other part; and whether he did not quit that country at the time herein before in that behalf mentioned, or at some and what other time; and whether he did not reside in this country, or in some and what other country, until the time of his death, or until some and what other period, except at the intervals herein before in that behalf mentioned, or at some and what other intervals; and whether, when he went to America, at such intervals, he did not go thither only to transact or settle his affairs in America, or for some and what other purpose; and whether the said testator did not always return to this country, as to his home, after such affairs were settled, or how otherwise; and whether the said testator did not, during such his residence in his country, and the place of his domicil, invest large, or some and what, sums of money, in the purchase of stock and annuities in the funds of this country, and also in the funds of the East India company, and of the South Sea company, or of some and what other public company or companies, and in some and what other securities; and whether the said testator did not depart this life in the month of August, 1824, or at some and what other time; and whether he was not, at the time of his death, resident in King street, Holborn, London, or at some other place; and whether

he was not domiciled in this country, at the time of his death; and whether the said testator, Matthias Aspden, was not in his lifetime, and at the time of making his will and codicils, possessed of very considerable property, and particularly whether he was not possessed of considerable and what property in the said English and American funds, or some and which of them, and of various other and what kinds of personal estate and effects to a very considerable, or some, and what, amount in the whole. And whether the said testator did not in his lifetime duly make and execute his last will and testament in writing, and 3 codicils thereto, bearing date the 6th day of December, 1791, or some and what other date. And whether such will and codicils are not in the words and figures, or to the purport and effect, hereinbefore in that behalf mentioned, or in some and what other words and figures, or to some and what other purport and effect; and whether the said testator did not afterwards depart this life at the time hereinbefore in that behalf mentioned, or at some and what other time; and whether he ever, and when, in any and what manner, altered or revoked his said will and codicils, or any part thereof; and whether he did not die without any or what issue. And whether he had ever and when been married; and whether the said George Roberts and Abram Liddon did not both, or one, and which of them, die in the lifetime of the said testator; and whether the President of the Bank at Philadelphia aforesaid, at the time of the death of the said testator, was not the said defendant, Henry Nixon; and whether the said testator did not, by the expression in the said third codicil to his said will, "President of the Old Bank," mean the President of the Bank at Phildelphia aforesaid, or how otherwise; and whether the said defendant, Henry Nixon, did soon, and when, after the death of the said testator, duly prove the said will and codicils in the proper court at Philadelphia, in America; and whether he has not also, and when, duly proved the same will and codicils in the proper ecclesiastical court in this country; and whether he has not obtained probate thereof from the prerogative court of Canterbury, and thereby become the legal, personal, representative of the testator; and whether he has not possessed himself of all the personal estate and effects of the said testator, or some and what part thereof in America and elsewhere, except in this country; and whether the same are not much more than sufficient to pay and satisfy all the funeral and testamentary expenses, debts, and legacies, of the said testator; and also to leave a very considerable, or some, and what surplus; and whether the said testator was not, at the time of his death, or at some and what other time, (among other descriptions of property,) possessed of property in the English funds; and whether such property did not consist of such stock and bank annuities, and to such amount, as is herein before in that behalf mentioned, or of some and what other stock and annuities, or to some and what other amount; and whether the said

testator was not also possessed at the time aforesaid, or at some and what other time, of East India stock and of South Sea stock, to a considerable, and what amount, respectively; and whether such respective quantities, of such respective stocks, were not of such respective amounts, as is herein before in that behalf mentioned, or of some and what other amount; and whether such respective quantities of such respective stock and annuities, or some and what part thereof, are or is not still standing in the name of the testator, or in the name of some and what other person or persons in the respective books of the said respective companies, or in the books of one, and which of them; and whether the said testator did not also die possessed of other and what personal estate, to a considerable and what amount in the whole, and particularly whether he had not money to the amount of £790 3*s*. 5*d*., in the hands of his bankers, the said Messrs. Hoare, or monies to some other and what amount; and whether the said testator did not leave your orator his heir-at-law; and whether the said Thomas Aspden, of Simondstone aforesaid, was not the common ancestor of the said testator and your orator; and whether the said last named Thomas Aspden did not die at the time herein before in that behalf mentioned, or at some and what other time; and whether he had not issue 12 children, or some and what other number of children; and whether the eldest of them was not the aforesaid John Aspden, or some, and what other person; and whether the said John Aspden did not die, and was not buried, at Deptford aforesaid, or at some and what other place, at the time herein before in that behalf mentioned, or at some and what other time; and whether he did not leave issue only one son, that is to say, the said Andrew Aspden, or some and what other issue; and whether the said Andrew Aspden did not die, and was not also buried, at Deptford aforesaid, at the time herein before in that behalf mentioned, or at some and what other time; and whether he did not leave issue your orator his only child and heir at law, or some and what other child or children, or some and what other person his heir at law; and whether the name of the father of said testator, was not Matthias Aspden, or some and what other name; and whether the said last named Matthias Aspden was not the 3d or some and what other son of the said Thomas Aspden, the common ancestor, or of some and what other person; and whether the said Matthias Aspden the father, was not resident to America, and did not, while he was there marry an American woman, and whether the christian name of such American woman was not Rebecca; and whether the said Matthias Aspden, the father, had not issue by her after the said marriage, an only child, namely the said testator, or some and what other issue; and whether the said Matthias Aspden, the father, did not die in or about the year 1765, or at some and what other time at Philadelphia, in North America, or at some and what other place; and whether he did not leave the

said testator his only lawful issue, or any or what other issue him surviving; and whether upon failure of issue of the said Matthias Aspden the father, and of the said Matthias Aspden the testator, your orator as heir at law of the said John Aspden, the eldest brother of the said Matthias Aspden the father, or in some or what other way did not become, on the death of the said testator, his heir at law, or who else is the heir at law of the said testator; and whether your orator as such heir at law of the said testator, or in some and what other character, is not entitled, under the aforesaid will of the said testator, to the residue of his personal estate and effects, after the payment of his funeral and testamentary expenses, debts and legacies; and whether such residue does not amount to a very large and what sum; and whether the said Henry Nixon has not always been, and still is, resident at Philadelphia aforesaid, or at some and what other place; and whether he has not, and when, signed and sent over to the said defendants, Samuel Williams and John Sterling, or to some and what other persons or person, a general power of attorney to collect, get in, and receive all the personal estate and effects of the said testator in this country, or to such purport, or to some and what purport, with a direction to them, to remit to him the said Henry Nixon in America, all such personal estate and effects of the said testator, when, as soon as they are received by them, the said defendants, Samuel Williams and John Stirling, or to such purport and effect, or to some and what other purport and effect; and whether the said defendant, Henry Nixon, does not threaten and intend to misapply such personal estate and effects in America, and instead of accounting with and paying to your orator, the residue of the said testator's personal estate and effects, as the residuary legatee under the said will, to pay and apply the same in a manner which is in direct opposition to the said will, or how otherwise; and whether your orator has not caused notice of his aforesaid rights under the said will to be given to the said Sam'l Williams and John Sterling, and has not requested them not to receive or remit such personal estate and effects of the said testator to the said Henry Nixon, or to such effect, or to some and what other effect; and whether the said defendants, Samuel Williams and John Sterling, do not threaten and intend, under the said power of attorney, or under some and what other authority, to sell out the said bank stock and bank annuities, and likewise the said East India stock, and also the said South Sea stock, or some other one, and which of them, or some and what part thereof; and also to receive the money securities and effects of the said testator, at the said defendants, Messrs. Hoare, his bankers, and all the other personal estate and effects of the said testator in this country, or of some and what part thereof; and also what he shall receive in respect of the personal estate and effects of the said testator, to remit [to] the said defendant Henry Nixon, or to some and what other person; and whether the said defendants, the governor and company of the Bank of Eng-

land, and the said East India Company, and the said South Sea Company, or some, or one, and which of them, do not intend respectively to permit the aforesaid transfers of such respective quantities of stock and annuities, to be made by the said defendants, Samuel Williams and John Sterling; and whether they, or some and which of them, have not been respectively applied to by your orator not to permit such respective transfers, or some and which of them; and whether the said defendants, Messrs. Hoare, do not likewise intend to pay over to the said Samuel Williams and John Sterling, or to some and what other persons or person, the money securities and effects, of the said testator in their hands; and whether it is not alleged by the said defendant, Henry Nixon, and whether such is not the case, that there are certain and what persons in America who claim to be next of kin to the said testator, as being brothers or sister, of his half blood, or as being descended from them, and in that character claim to be entitled under the said will of the said testator to the residue of his personal estate and effects, and that the said defendant Henry Nixon, may set forth the names, descriptions, and places of abode, of all such claimants or claimant; and whether your orator is not unable to set forth, whether there are such, and if so, whether such brothers or sisters of the half blood are living or dead, or whether they have left any children or child, or who are, or is their personal representatives or representative; and whether upon the true construction of the said will of the said testator, the next of kin of the said testator are entitled under the same to take the residue of the personal estate and effects of the said testator; and whether your orator is not entitled to the same under the said will as the heir at law of the said testator, or in some and what other character; and whether under such circumstances your orator was not in hopes that the said defendant, Henry Nixon, would have accounted with your orator for the residue of the personal estate of the said testator, after payment of his funeral and testamentary expenses, debts, and legacies; but whether he does not refuse so to do, and why and for what reason; and whether the said defendant, Henry Nixon, does not threaten and intend to withdraw from this country, by means of his aforesaid agents, the said defendants, Samuel Williams and John Sterling, or by some and what other means, all the personal estate and effects of the said testator in this country, or some and what part thereof, and to apply the same or contrary to the said will of the said testator; and whether the said defendants, the governor and company of the Bank of England, and the said East India company, and the said South Sea company, ought not to be respectively restrained by the order of this honorable court from permitting any transfer to be made by the said defendant, Henry Nixon, or the said defendants, Samuel Wiliams and John Sterling, of the said respective stock and annuities of the said testator standing in his name in their respective books; and whether the said defendants, Messrs. Hoare, ought

not likewise to be restrained, by the like order, from parting with the said money of the said testator in their hands, or some and what part thereof; and whether the said defendant, the governor and company of the Bank of England, should not be ordered to transfer the said bank stock and bank annuities, or some and what part thereof respectively, into the name of the accountant general of this honorable court; and whether, also, the proper direction should not be given for the sale of the said East India stock and South Sea stock of the said testator, or some and what part thereof; and whether the money arising therefrom respectively, or some and what thereof, should not be invested in the purchase of 3 per cent. consolidated bank annuities, in the name of the said accountant general, in trust, in this cause; and whether the said defendants, Messrs. Hoare, should not be directed to pay the money of the testator in their hands, or some and what part thereof, into court; and whether the same, or some and what part thereof, should not be laid out in like manner; and whether some proper person ought not to be appointed by this honorable court to receive and get in all the other outstanding estate and effects of the said testator in this country; and that the said defendant, Henry Nixon, may set forth an account of the personal estate and effects of the said testator possessed by him, or by any person or persons by his order, or for his use, and how and in what manner the same has been disposed of; and that an account may be taken, by and under the direction of this honorable court, of the personal estate and effects of the said testator, possessed or received by, or come to the hands of, the said defendant, Henry Nixon, or of any other person or persons by his order, or for his use, or got in and possessed, or secured in any way, since the decease of the said testator; and that such personal estate and effects may be applied in payment of the said testator's funeral and testamentary expenses, and debts and legacies, in a due course of administration; and that the residue of such personal estate and effects may be ascertained; and that your orator may be declared by this honorable court to be entitled, upon the true construction of the said will, as heir of the said testator to such residue; and that such residue may be accordingly directed by this honorable court to be paid to your orator; and that, in the mean time, the said defendant, Henry Nixon, and the said defendants, Samuel Williams and John Sterling, may be restrained by the injunction of this honorable court from collecting and receiving any part of the personal estate and effects of the said testator in this country, and particularly from selling or transferring the said sum of £4,000 bank stock, £10,000 £3 per cent. consolidated bank annuities, £12,500 reduced 3½ per cent. bank annuities, and £3,500 new 4 per cent. bank annuities, standing in the books of the said governor and company of the Bank of England in the name of the said testator; and the said sum of £3,000 stock standing in the books of the said East India company, in the name of

the said testator, and the said sum of £5,000 stock standing in the books of the said South Sea company, in the name of the said testator, and from receiving the dividends thereon respectively, and the said monies, securities, and effects, now in the hands of the said defendants, Messrs. Hoare, as bankers of the said testator; and that the said defendants, the governor and company of the Bank of England, and the said defendants, the East India company, and the said defendants, the South Sea company, may be respectively restrained from permitting any transfers of such respective sums to be made; and that also the said defendants, the governor and company of the Bank of England, may be directed to transfer the said respective stock and annuities now standing in the name of the said testator in their books, and all dividends accrued thereon respectively, into the name of the accountant general of this honorable court, in trust in this cause, and also that proper directions may be given for the sale of the said stock respectively, standing in the name of the said testator, in the respective books of the East India company and of the South Sea company; and that the monies arising from such sale may, together with any other monies belonging to the estate of the said testator, and paid into court, be laid out in the purchase of stock, in the 3 per cent. consolidated bank annuities, in the name of the said accountant general in trust in this cause; and that the said defendants, Messrs. Hoare, may be restrained from paying and delivering the said money, securities, and effects of the said testator, in their hands, to the said defendant, Henry Nixon, or the said defendants, Samuel Williams and John Sterling; and that the said defendants, Messrs. Hoare, may be ordered to pay the said money of the said testator, in their hands, into court; and that the said defendants, Samuel Williams and John Sterling, may be restrained by the injunction of this honorable court from remitting any part of the personal estate and effects of the said testator in this country to the said defendant, Henry Nixon; and that some proper person may be appointed by this honorable court to receive and get in all other the outstanding personal estate and effects of the said testator, and for such further and other relief as to your lordship shall seem meet, and the nature of his case may require. May it please your lordship, the premises considered, to grant unto your orator not only his majesty's most gracious writ of injunction, issuing out of and under the seal of this honorable court, to restrain the said Henry Nixon from receiving and withdrawing from this country any of the personal estate and effects of the said testator, and to restrain the said Samuel Williams and John Sterling from receiving or remitting the same estate and effects, or any part thereof, to the said Henry Nixon, and particularly restraining them, respectively, from selling or transferring the bank stock, 3 per cent. consolidated bank annuities, reduced 3½ per cent. bank annuities, new 4 per cent. bank annuities, East India stock, and South Sea stock, stand-

ing in the testator's name, and from receiving the dividends thereon respectively, and said monies, securities, and effects in the hands of Messrs. Hoare, or any other, the personal estate and effects of the said testator in this country; and also to restrain the said governor and company of the Bank of England, and the said honorable East India company, and the said honorable South Sea company, respectively, from making or permitting to be made any transfer or sale of such stock and bank annuities, or any part of the same, respectively; and also to restrain the said Messrs. Hoare from paying over, or parting with, all, or any part of, the monies, securities, and effects of the said testator in their hands; but also to grant unto your orator his majesty's most gracious writ or writs of subpœna to be directed to the said Henry Nixon, when he shall be within the jurisdiction of this honorable court, Samuel Williams and John Sterling, the said governor and company of the Bank of England, the said honorable company of merchants trading to the East Indies, the said honorable company of merchants trading to the South Seas, the said Henry Hoare, Henry Hugh Hoare, Charles Hoare and Henry Merrick Hoare, and the rest of the aforesaid confederates when discovered, thereby commanding them, and every of them, on a certain day, and under a certain pain therein to be limited, personally to be and appear before your lordship in this honorable court, and then and there, upon their several and respective corporal oaths, to make a true, direct, and perfect answer to all and singular the premises, and further to stand to, perform and abide such order, direction, and decree therein, as to your lordship shall seem meet; and your orator will ever pray, &c.

JOHN NEWLAND.

X'd—J. R. S.

This is the paper exhibit, or document, referred to by James Robinett Scruby, in his examination, as the paper marked B.

JAS. R. SCRUBY,
W. COWBURN,
ALFRED KING.

This is the paper exhibit, or document, referred to by Samuel Frederick Milford, in his examination, as the paper marked B.

SAM'L FRED'K MILFORD,
W. COWBURN,
ALFRED KING.

In chancery, 20th June, 1836.

ALLEN, by UTTERSON.

The answer of Henry Nixon, one of the defendants to the bill of complaint of John Aspden, complainant.

This defendant, saving and reserving to himself all benefit and advantage of exception, or otherwise, to the said bill of complaint, for answer to the said bill, or to so much thereof as this defendant

is advised is material or necessary for him to make answer unto, answereth and saith: he believes that Matthias Aspden, the testator in the said bill named, was born in or about the year 1756, at Philadelphia, in North America, then being the place of residence of his parents; that he continued to reside there, and afterwards was engaged in business at Philadelphia as a merchant, with some success, before he was 21 years of age. Upon the breaking out of the war between Great Britain and America, in the year 1776, or some time in that year, being still a minor, he went to England, with what view respondent is not able, from his own knowledge, to say, but he believes he went with an impression that the power of Great Britain must soon prevail in putting down the resistance made in America. That the said testator subsequently came several times to the United States of America, and invested large sums there in the public or Government stocks, and on other securities. That he made his will, and the codicils thereto, at Philadelphia, the place of his birth, and deposited them in the bank there; but whether, after so returning to the United States of America, the testator went back to England as his home, or only for the purpose of superintending his property there, and whether the testator did in fact change his domicil, this defendant doth not know, and is unable to answer, from his belief or otherwise. But this defendant believes, that the said testator, when in England, considered himself an alien, and as such claimed to have returned the tax taken from his dividends whilst he was absent from England, according to the provisions of the said act, exempting aliens from the tax if not resident in England. And this defendant believes and admits, that the said testator invested large sums of money in the purchase of stock and annuities in the English government funds, and also in the funds of the East India Company, and of the South Sea Company, and also in the public funds of the United States of America, and in France and in other securities. And this defendant believes it to be true, that the said testator departed this life in the month of August, 1824, and was, at the time of his death, resident in King street, Holborn, London, but whether the said testator was domiciled in England at the time of his death, this defendant doth not know, and is unable to answer, as to his belief or otherwise. And this defendant believes it to be true, that the said testator Matthias Aspden was, in his lifetime, and at the time of making his will and codicils, in the said bill, and hereinafter mentioned, possessed of very considerable property, and particularly in the English, French, and American funds, and of various other kinds of personal estate and effects, to a very considerable amount in the whole; and that the said testator, in his lifetime, at Philadelphia, duly made and executed his last will and testament in writing, and 3 codicils thereto, bearing date the 6th day of December, anno domini 1791, and that such will and codicils are in the words and figures, or to the purport and effect, in the said bill in that behalf mentioned and set

forth; but for greater certainty as to the date and contents of the said will and codicils, this defendant craves leave to refer thereto. And this defendant saith, that the said testator deposited his said will and codicils, for safe custody, in the cashier's vault of the Bank of North America, at Philadelphia aforesaid, known as the Old bank, where the same were found after his decease. And this defendant believes it to be true, that the said testator departed this life, on or about the 9th day of August, 1824, without having revoked or altered his said will and codicils, and without issue, and that the said testator had never been married. And this defendant admits it to be true, that Geo. Roberts and Abm. Liddon, in the said will respectively named, both died in the lifetime of the said testator, and that this defendant, at the time of the death of the said testator, was the president of the Bank of North America, at Philadelphia aforesaid, known by the name of the Old bank. And this defendant believes, that the said testator did, by the expression in the 3d codicil to his said will, "President of the Old Bank," mean the president of the Bank of North America, at Philadelphia aforesaid. And this defendant admits it to be true, that soon after the death of the said testator, this defendant duly proved the said will and codicil in the proper court of Philadelphia, in America; and that this defendant had also duly proved the said will and codicils in the prerogative court of Canterbury, in England, and obtained a probate thereof from that court, and thereby became the legal personal representative of the said testator. And this defendant admits it to be true, that he has possessed himself of all the personal estate and effects of the said testator in America, or so much thereof as hath come to this defendant's knowledge, a true account of which is in the schedule hereto annexed, marked A; and this defendant has paid the charges of proving the said will in America, and other charges incident thereto, amounting to 701 dollars [and] 74 cents, and 5 of the legacies (the others not having yet been claimed) bequeathed by the said will, amounting to 1,333 dollars [and] 35 cents, a true account of which payments is in schedule hereto annexed, marked B; and that as executor, other charges must be incurred in managing and settling the estate, the amount of which cannot now be ascertained; besides which, by the laws of Pennsylvania, he will be entitled to a commission for his services.

And this defendant further answering saith, he believes it to be true, that the said testator was, at the time of his death, (among other descriptions of property,) possessed of property in the English funds, and consisting of such stock and bank annuities, and to such amount, as in the said bill in that behalf mentioned; and that the said testator was also, at the time of his death, possessed of East India stock, and of South Sea stock, of such respective amount as in the said bill in that behalf mentioned; and that such respective quantities of such respective stock and annuities are still standing in the name of the testator in the books of the said

respective companies; and this defendant believes that the said testator also died possessed of other personal estate to a considerable amount, and particularly of the sum of £790 3 5 in the hands of his bankers, Messrs. Hoare, in the said bill named; and this defendant, further answering, saith, he doth not know, and is unable to answer from his belief, or otherwise, whether the said testator left the complainant his heir-at-law, or whom he left his heir-at-law; or whether Thomas Aspden, of Simonstone, in Lancashire, or what otner person, if any, was the common ancestor of the said testator and the complainant; or whether the said last named Thomas Apsden died at the time in the said bill in that behalf mentioned, or at what other time, or whether he had issue 12 children, or what other number of children, or whether the eldest of them was John Aspden, or what other person, or whether the said John Aspden died and was buried at Deptford, in Kent, at the time in the said bill in that behalf mentioned, or at what other time, or whether he left issue only one son named Andrew Aspden, or what other issue, or whether the said Andrew Aspden died, and was also buried at Deptford aforesaid, or at what other place at the time in the said bill in that behalf mentioned, or at what other time, or whether he left issue the complainant, his only child and heir-at-law, or what other child or children, or what other person, his heir-at-law; and this defendant saith, he believes it to be true, that the name of the father of the testator was Matthias Aspden, but whether the said last named Matthias Aspden was the third or what other son of Thos. Aspden, the alleged common ancestor of the said testator and of the complainant, this defendant doth not know, and is unable to answer, from his belief or otherwise; and this defendant believes it to be true that the said Matthias Aspden, the father, was resident in America, and while he was there married Rebecca Hartley, a native of America, who was the widow of Roger Hartley, deceased, and the daughter of Philip and Rebecca Packer, both residents of North America; and that the said Matthias Aspden, the father, had issue by her after the said marriage, an only child, namely the said testator; and this defendant has heard it mentioned that the said Matthias Aspden married the said Rebecca Hartley, who was his housekeeper, while she was pregnant with the said testator, and he believes that the said Rebecca Hartley had several children by her former husband, Roger Hartley, none of whom are now living, but some of them left children who are still living; and this defendant believes that the said Matthias Aspden, the father, had a former wife named Mary Watson, the daughter of Jonathan Watson, of Elwithen, in Lancashire county, in England, by whom he had issue a daughter, named Mary, who intermarried with Henry Harrison, of Philadelphia, and is since deceased, leaving issue several children, one of whom, namely George Harrison, is now living in the city of Philadelphia, the others are dead, but most of them left children now living; and this defendant

believes it to be true that the said Matthias Aspden, the father, died in or about the year 1765, at Philadelphia, in North America; but this defendant denies to the best of his knowledge, information, and belief, that the said Matthias Aspden left the said testator his only lawful issue him surviving; for this defendant believes that the said Matthias Aspden also left his daughter Mary Harrison, his lawful issue, him surviving; and that this defendant saith that there are many persons residing in the United States of America, who claim to be next of kin to the said testator; that this defendant is not able from his own knowledge to name all the persons who so claimed to be next of kin; but he, this defendant, has annexed to this his answer, a schedule marked C, which he prays may be taken as part of his answer, containing the names of some of the persons so claiming to be next of kin, and the manner in which they have alleged to this defendant they are connected with the said testator; and this defendant saith, that as he is advised and believes, the laws regulating the descent and distribution of real and personal estate differ in different States of the United States, but that by the laws of Pennsylvania, within which the city of Philadelphia is situated, the real and personal property undisposed of by will of a person who dies, not leaving a father, mother, husband, wife, or children, but brothers or sisters of the whole, and also of the half blood, or their representatives, would be thus distributed—the brothers and sisters of the whole blood, and the legal representatives of such of the brothers and sisters of the whole blood as are dead, would inherit the real estate in fee simple as tenants in common; the representatives of those who are dead taking together the same share which their parent would have taken if living, and the personal estate would be equally divided among the brothers and sisters of the whole and of the half blood, or their representatives; the representatives of a deceased brother or sister taking the share which parent would have taken if living; but if there are no brothers or sisters of the whole blood, or their representatives, the brothers and sisters of the half blood would take the personal property absolutely, in preference of other kindred of the whole blood, and would inherit the real estate in fee simple, except such parts thereof as came to the intestate by descent, devise, or gift of some one of his ancestors, in which case all those who are not of the blood of such ancestor would be excluded from the inheritance of such part of the real estate. That by the laws of Pennsylvania, representation is not confined to the children of brothers and sisters, and their issue, but is extended to their most remote descendants, children always taking together the same share which their parents would have done if living; and this defendant saith he doth not know, and is unable to set forth, from his belief or otherwise, whether the complainant as heir-at-law of the said John Aspden, the alleged eldest brother of the said Matthias Aspden, the father, or in any other way, became, on

the death of the said testator, his heir-at-law, or who else is the heir-at-law of the said testator; and this defendant further answering saith, he admits it to be true, that he has always been, and still is, resident at Philadelphia aforesaid, and that he has signed and sent over to Samuel Williams and John Sterling, two other defendants in the said bill named, a general power of attorney, bearing date the 7th day of December, anno domini 1824, to collect in, and receive all the personal estate, and effects of the said testator in this country, or to that effect, with a direction to them to remit to this defendant in America, all such personal estate and effects of the said testator, when and as soon as the same should be received by them, the said Samuel Williams and John Sterling, or to that effect; and this defendant saith, he intended to apply such personal estate and effects in America in such manner as should be determined by a court of competent jurisdiction in that country, and not in any manner which is in direct opposition to the said will as in the said bill is alleged; and this defendant has been informed and believes, that the complainant has caused notice of his alleged rights under the said will to be given to the said Samuel Williams and John Sterling, and has requested them not to receive or remit such personal estate and effects of the said testator to this defendant, or to some such effect; and this defendant believes, that the said Samuel Williams and John Sterling intended, under the said power of attorney, or under the proper authority of this defendant, to sell out the said bank stock and bank annuities, and likewise the said East India stock, and also the said South Sea stock, and to receive the money, securities, and effects of the said testator, at the said defendants, Messrs. Hoare, his bankers, and also the other personal estate and effects of the said testator in England, and to remit the produce of the said stocks and annuities, and what they should receive in respect of the personal estate and effects of the said testator, to this defendant, in order to be distributed according to the directions of the said will; and this defendant saith, he believes that the expenses of proving the said will in England amounted to the sum of £715 17 10; and that the said Samuel Williams and John Sterling, by virtue of the said power, received the sum of £300, being one-half year's dividend on the sum of £3,000 East India stock, belonging to the said testator, and applied the same in part payment of the said sum of £715 17 10, the residue thereof amounting to £415 17 10, being, as this defendant believes, paid by the said defendants, Messrs. Hoare, out of the money in their hands belonging to the said testator. And this defendant further answering, saith, he admits it to be true, that it is alleged by this defendant, and that such is the case, that there are various persons in America, who claim to be next of kin of the said testator, as being brothers or sisters of his half-blood, or as being descended from them, as is hereinbefore mentioned, and in that character claim to be entitled, under the said will of the said testator, to the residue of his

personal estate and effects; and this defendant hath, in the schedule to this his answer annexed set forth, to the best of his information and belief, the names, descriptions, and places of abode of all such claimants. And this defendant saith, that he submits to the judgment of the court whether, upon the true construction of the said will of the said testator, the next of kin of the said testator, are entitled, under the same, to take the residue of the personal estate and effects of the said testator; or whether the complainant, if he be the heir at law of the said testator, is entitled to the same under the said will as such heir at law; and this defendant hath, to the schedule A, of this his answer annexed, set forth to the best of his knowledge, recollection, and belief, an account of the personal estate and effects of the said testator, possessed by him, or by any person or persons by his order, or for his use, and how, and in what manner, the same has been disposed of. And this defendant submits to act as this honorable court shall direct, being indemnified and paid his costs, charges, and expenses therein; and this defendant denies all combination and confederacy with which he is charged in and by the said bill; without this, that, &c.

HENRY NIXON.

Schedule A, referred to in the annexed answer.—Account of the personal estate and effects in America of Matthias Aspden, deceased, which have come to the knowledge and possession of Henry Nixon, his executor.

In 3 per cent. stock of the United States - -	$68,632 01
In 7 per cent. stock of the United States - -	10,000 00
20 shares of stock of the Bank of the United States	2,000 00
Cash received for back dividends in Loan office, to 1st day of Jan'y, 1825 - - - -	2,669 19
Cash rec'd for back dividends from the Treasury of the United States, to 1st day of Jan'y, 1825 -	1,994 06
Cash rec'd from Stephen Girard, being the bal. of his acct. with the testator - - -	361 89
Cash rec'd, being dividends on Gov't stock, from 1st day of Jan'y, 1825, to the 5th day of April, 1826 - - - - - -	3,793 58
Cash rec'd, being dividends of stock of the Bank of the United States, from the 1st day of Jan'y, 1825, to the 5th day of April, 1826 - -	160 00
	$89,510 73

Note.—Of the above sum of 89,510 dollars 73 cents, there remained in the Treasury of the United States the certificate for the sum of 10,277 dollars 71 cents of 3 per cent. stock of the United

States, and the certificates for the sum of 9,800 dollars of the same, having been lost or mislaid during the testator's lifetime, are not in the possession of his executor. The interest on both these sums is paid to the executor, and new certificates may, it is believed, be obtained. The sum of 10,000 dollars of 7 per cent. United States stock has been paid off by the Government.

Schedule B, referred to in the annexed answer.—Accounts of payments made by Henry Nixon, executor of the will of Matthias Aspden, deceased.

Paid to Asher Hartley, a son of Benj. Hartley, dec'd, his legacy - - -	$266 67	
Paid to Rebecca Burroughs, a daughter of said Benj. Hartley, her legacy -	266 67	
Paid to Bathsheba Brick, another daughter of the said Benj. Hartley, her legacy - - - - - -	266 67	
Paid to Wm. Hinchman, a son of Ann Hinchman, dec'd, his legacy - -	266 67	
Paid to Joseph Hinchman, administrator of James Hinchman, (who died after Matthias Aspden,) a son of Ann Hinchman, his legacy - - - -	266 67	
		$1,333 35
Cash paid expenses of proving the will in Philadelphia, and other charges incident thereto, including fees to counsel		$701 74

Schedule C, referred to in the annexed answer.—The following claim to be next of kin to the testator, Matthias Aspden, to wit:

1. The lineal descendants of Mary Harrison, the half sister of the testator, on the paternal side. Those now claiming are—1. George Harrison. 2. Thos. H. White. 3d. Elizabeth McPherson. 4. Mary Bronson. 5. Mary Harrison. 6. Rebecca McMurtrie. They allege that they are related to the testator in the following manner: Matthias Aspden, the father of the testator, married, as his first wife, Mary Watson, daughter of Jon'n Watson, of Elwithen, of Lancashire county, England, and had issue, one daughter, Mary, who married with Henry Harrison, of Philadelphia, by whom she had the following children—

1. Mary, who married the Rt. Rev'd Wm. White. She is dead, having left 3 children, all of whom are still living, viz:

1. Thos. H. White.

2. Elizabeth McPhearson, widow of Wm. McPherson, dec'd.
3. Mary Bronson, widow of Enos Bronson, dec'd.
2. Henry, who died in the testator's lifetime, without issue.
3. Joseph, who died before the testator, without issue.
4. Ann, who married ——— Paca, and died, leaving one child, which died in infancy before the testator.
5. William, } Twins, who died in infancy during the lifetime of
6. George, } the said testator.
7. Matthias, who married Rebecca Francis, and died, leaving 2 children, viz:
1. Henry, who married Elizabeth Francis, and died before the testator, leaving one child, who is still living, vizt. Mary Harrison.
2. Rebecca, who married Jas. McMurtrie. She is still living.
8. George Harrison, still living.
2. The lineal descendants of the brothers and sisters of the half blood of the testator, on the maternal side; a part only of these have as yet claimed.
1. The children of Roger Hartley, deceased.
2. Rebecca Burrough.
3. Esther Hartley.
4. Bathsheba Brick.
5. Elizabeth Brick.
6. The children of James Hartley, deceased.
7. The children of Mary Brick, deceased.
8. Wm. Hinchman.
9. The children of James Hinchman, deceased.
10. The children of Ann Scull, deceased.
11. The children of John Hinchman, deceased.
12. Sarah Champion.
13. Ann Ellis.
14. John Zanes.
15. Isaac Zanes.
16. Samuel Zanes.
17. Marah A. Church.
18. Ann Warrell.
19. Rebecca Fowler.
20. The children of Isaac Kay, deceased.
21. The children of Matthias Kay, deceased.
22. The children of Elizabeth West, deceased.

They allege that they are related to the testator in the following manner. Rebecca, the mother of the testator, previous to her marriage with the testator's father had been married to Roger Hartley, by whom she had several children hereinafter named, who were the brothers and sisters of the half blood of the said testator. The said half brothers and sisters were—

1. Roger Hartley; he is dead, leaving children, but their number is not known.
2. James Hartley; he is said to be dead, without issue.

3. Benj. Hartley; he is dead, leaving issue, to wit:
1. James Hartley, who died, leaving issue; number not known.
2. Mary Brick, who is dead, leaving children; their number not known.
3. Rebecca Burrough, now living.
4. Esther Hartley, now living.
5. Bathsheba Brick, now living.
6. Elizabeth Brick, now living.
4. Jannet Hartley, said to be dead, without issue.
5. Anne Hinchman; she is dead, leaving issue, viz:
1. Wm. Hinchman, living.
2. James Hinchman, living at testator's death, and since dead.
3. Anne Scull; she is said to be dead, leaving issue, their number not known.
4. John Hinchman; said to be dead, leaving children, their number not known.
6. Bathsheba Zanes; she is dead, leaving issue, viz:
1. Sarah Champion, living.
2. Anne Ellis, living.
3. John Zanes, living.
4. Isaac Zanes, living.
5. Samuel Zanes, living.
7. Rebecca Kay; she is dead, leaving issue, viz:
1. Mary A. Church, living.
2. Anne Warrell, living.
3. Rebecca Fowler, living.
4. Isaac Kay; said to be dead, leaving issue, number not known.
5. Matthias Kay; said to be dead, leaving issue, number not known.
6. Elizabeth West; said to be dead, leaving issue, number not known.

3. Those who claim through the said brother and sister of the mother of the testator. Those who are known are—

1. Samuel Pacher; he alleges that he is related to the said testator as follows: the maiden name of the testator's mother was Rebecca Pacher, she being the daughter of Philip and Rebecca Pacher, her eldest brother was Samuel Pacher, deceased; his eldest son was Daniel Pacher, deceased, whose eldest son is Samuel Pacher, the claimant now living.

2. Those who claim through Rhody Pacher, who they allege was the sister of the testator's mother. Rhody Pacher married George Hammett; both are now deceased. They had 7 children, to wit:

1. Joseph, who is dead, leaving children, viz: one, Anne, who is dead, leaving a son, Joseph Lippincott.
2. George, who is dead, leaving a daughter, Leah Prichell.
3. Martha, who married, and is now a widow, Martha Cole.
4. Lydia, who married, and is now a widow, Lydia Blackwood.
5. Hannah, who married, and is dead, leaving a daughter, Maria Hayes

6. John, who is living.
7. Kilurah, who married, and is now a widow, Kelurah Schenck.
8. Sarah, now living, the wife of S. Kirkbride.
9. Joseph, now living.

2. John, who is dead; he left the following children:

1. Thomas Hammett,
2. John Hammett,
3. Sarah Baxter,
4. Eliz'h Newton,
5. Anne Shinn,
6. Hepsala Hammett,
7. Priscilla Brown,

} Of these it is not certainly known how many are now living, nor whether those who are dead left children.

3. Samuel; he is dead. The only child of his, who is known, is Sibella Prichett.

4. Elias; he is dead, leaving a daughter, Rebecca Phillips.

HENRY NIXON.

X'd.—J. R. S.

This answer was taken, and the above named Henry Nixon, the def't, was duly sworn to the truth thereof, upon the Holy Evangelists, at the house of John Sergeant, situate in Philadelphia, in the United States of America, on the 9th day of May, in the year of our Lord 1826, by virtue of the commission hereunto annexed.

Before us—

JOHN SERGEANT,
——— HOLLINGSWORTH,
JACOB R. SMITH.

This is the paper exhibit or document referred to by James Robinett Scruby, in his examination, as the paper marked H.

JAS. R. SCRUBY,
W. COWBURN,
ALFRED KING.

This is the paper exhibit or document referred to by Samuel Frederick Milford, in his examination, as the paper marked H.

SAM'L FRED'K MILFORD,
W. COWBURN,
ALFRED KING.

30th July, 1825.
VESEY, by TURTON.

Amended pursuant to order, dated 28th May, 1827.

To the right honorable John, Earl of Eldon, lord high chancellor of Great Britain.

Humbly complaining, sheweth unto your lordship, your orator, John Aspden, of Old street, in the parish of St. Luke, in the city of London, gentleman, the heir at law of Matthias Aspden, the

testator hereinafter named, that the said Matthias Aspden, of King street, Holborn, London, deceased, was formerly a merchant in Philadelphia, in North America, but quitted that place when the war broke out between this country and America, in the year 1776, and came to, and resided, and became domiciled in this country until the time of his death, hereafter mentioned, except that he went to America after the conclusion of the said war, and at one or two other times, but only to transact or settle his affairs there; and except that he went once or twice on the continent of Europe, and always returned to this country as to his home; and the said Matthias Aspden, during his residence in this country as the place of his domicil, invested large sums of money in the purchase of stock and bank annuities in the funds of this country, and also in the funds of the East India and South Sea Companies; and the said Matthias Aspden departed this life on the 9th of August, 1824, (being then resident in King street, Holborn, aforesaid, and domiciled in this country.)

And your orator further sheweth unto your lordship, that the said Matthias Aspden, in his lifetime, and at the time of making his will, hereinafter mentioned, was possessed of very considerable personal property, and was, or believed himself to be, entitled to considerable real estate in this country, and that he was, in particular, possessed of considerable property in the English, American, and French funds, and of various other kinds of personal estate and effects, to a very considerable amount in the whole; and in his lifetime he duly made and executed his last will and testament in writing, with 3 codicils thereto, bearing date the 6th day of December, 1791, and which are in the words and figures following, viz:

"These are to certify, that I do hereby annul and revoke all my former wills, giving and bequeathing my estate, real and personal, to my heir at law, first paying all my just debts and funeral expenses, and the following legacies:

First, to each of the children of my half brother Benj'n Hartley, dec'd, that may be alive at my death, the sum of £100 to each, Pennsylvania currency; and to my half sister Bersheba Zare, wife of Elnathen Zare, the sum of £400, Pennsylvania currency. Both the above living, or did live, near Haddonfield. And to my half brother Roger Hartley, living at present in Lancaster county, the sum of £300, of the like currency.

"Witness my hand, this 6th day of December, 1791, Philadelphia.

MATTHIAS ASPDEN."

"Least any question should arise about the legitimacy of my birth, it is my will, that my estate, real and personal, should go to the party who would be my lawful heir in case there might arise no doubt on that head. It is firmly believed, by and from the best information, that my birth was after marriage.

PHILADELPHIA, *December 6th* 1791."

"I do further give £100 currency to each of the children of my dec'd half sister Ann Hinchman, that may be living at my death. *December 6th*, 1791."

"*The last will of Matthias Aspden.*

I do hereby appoint my friends Mr. George Roberts, and Mr. Abram Liddon, with the president of the Old bank, at the time being, to be my executors to this my last will.

MATTHIAS ASPDEN."

"NOTE.—My property in England is as *is as* follows: £12,500 in the 4 per cent. stock; £3,000 in the 5 per cent. stock; £1,800 in the 3 per cent. stock;" as in and by the probate of the said will, when the same shall be produced to this honorable court, reference being thereunto had, will appear.

And your orator further sheweth unto your lordship, that the said testator so departed this life without having revoked or altered his said will, and without issue, he never having been married, and without any brother or sister of the whole blood, him surviving, but leaving half brothers and sisters, and descendants of half brothers and sisters, on the mother's side, and descendants of a half sister of the father's side, but which half sister was illegitimate, him surviving.

And your orator further sheweth unto your lordship, that the said George Roberts and Ab'm Liddon, both died in the lifetime of the said testator, and that the president at the bank at Philadelphia, at the time of the death of the testator, was Henry Nixon, esq'r, and the said testator, by the expressions in the third codicil of his said will, "President of the Old Bank," meant the president of the Bank of Philadelphia; and the said Henry Nixon, soon after the death of the said testator, viz: on the 19th of November last, proved the said will in the proper ecclesiastical court of Philadelphia, and had lately proved the same will in the proper ecclesiastical court in this country, and has obtained probate thereof from the prerogative court of the Archbishop of Canterbury, bearing date the 27th of July, now instant, and thereby became the legal personal representative of the said testator; and the said Henry Nixon hath possessed himself of all the personal estate and effects of the said testator in America and elsewhere, except in this country, and which are much more than sufficient to pay and satisfy all the funeral and testamentary expenses, debts, and legacies of the said testator, and also to leave a very considerable surplus.

And your orator further sheweth unto your lordship, that the said testator was, at the time of his death, among other descriptions of property, possessed of property in the English funds, that is to say: £4,000 bank stock; £10,000 3 per cent. consolidated bank annuities; £6,500 3 and a half per cent. bank annuities; £6,000 £4 per cent. bank annuities, not assented to take £3 10 per cent. per

annum in lieu thereof, in the manner provided by an act of Parliament, passed in the 5th year of his present majesty, entitled "An act for transferring several annuities of £4 per cent. per annum, into annuities of £3 10 per cent. per annum;" and £3,500 new 4 per cent. bank annuities; and which stock and annuities are still standing in the books of the governor and company of the Bank of England, in the name of the said testator, with an arrear of dividends or interest thereon respectively; and the said testator was also possessed of East India Stock, and also of South Sea Stock, to a considerable amount, that is to say: £3,000 East India stock, and £5,000 South Sea stock; and the said testator died also possessed of other personal estate and effects, of various descriptions, to a large amount in the whole; and particularly he had money in the hands of Messrs. Hoare, of Fleet street, London, his bankers, to amount of £790 3 5; and also securities and other effects.

And your orator further sheweth unto your lordship, that the said testator left your orator his heir at law, and as evidence thereof, your orator sheweth, that Thomas Aspden, of Simondstone, in Lancashire, was the common ancestor of both the said testator and your orator, and died many years ago, being before the birth of your orator, who is now aged 85 years, having had issue 12 children, the eldest of whom was John Aspden, who died and was buried at Deptford, in Kent, in the year 1754, leaving issue only one son, viz: Andrew Aspden, who died and was also buried at Deptford aforesaid, in the year 1771, leaving your orator his only child and heir at law.

And your orator further sheweth unto your lordship, that the name of the father of the said testator was Matthias Aspden, who was the third son of the said Thomas Aspden, the common ancestor; and that the said Matthias Aspden, the father, being resident in America, married there an American woman, whose Christian name was Rebecca, and who was the widow of Roger Hartley, then deceased, by whom she had previously had several children; and that he, the said Matthias Aspden, the father, had issue by her, some time after the said marriage, an only child, viz: the said testator; and the said Matthias Aspden, the father, died in or about the year 1765, in Philadelphia aforesaid, leaving the said testator, his only lawful issue, him surviving, so that upon the failure of issue of the said Matthias Aspden, the father, and of the said Matthias Aspden, the testator, your orator, as the grandson and heir at law of the said John Aspden, who was the eldest brother of the said Matthias Aspden, the testator, became, on the death of the said testator, his heir at law.

And your orator further sheweth unto your lordship, that he is advised and submits, that as such heir of the said testator, he is entitled, under the aforesaid will of the said testator, to the residue of the personal estate and effects of the said testator, after payment of his funeral and testamentary expenses, debts, and legacies, and which residue amounts to a very large sum.

And your orator further sheweth unto your lordship, that the said Henry Nixon, although he has proved the said will in this country, always has been, and still is, resident at Philadelphia aforesaid, in North America, and he has signed and sent over to Samuel Williams and John Sterling, both of the city of London, merchants, a general power of attorney to collect, get in, and receive all the personal estate and effects of the said testator in this country, with a direction to them to remit to him, the said Henry Nixon, in America, all such personal estate and effects of the said testator, when and so soon as they were received by them, the said Samuel Williams and John Sterling; and the said Henry Nixon threatens and intends to misapply such personal estate and effects, and instead of accounting with and paying to your orator the residue of the said testator's personal estate and effects, as the residuary legatee under the said will, to pay and satisfy the same in a manner which is in direct opposition to the said will. And your orator further sheweth unto your lordships, that he has caused notice of his aforesaid rights to be given to the said Samuel Williams and John Sterling, and has requested them not to receive or remit such personal estate and effects of the said testator to the said Henry Nixon; but the said Samuel Williams and John Sterling threaten and intend, under the said power of attorney, to sell out the said bank stock and bank annuities, and likewise the said India stock, and the said South Sea stock; and also to receive the money securities and effects of, and belonging to, the said testator, at the said Messrs. Hoare, his bankers, and all the other personal estate and effects of the said testator in this country, and to remit the produce of the said stocks and annuities, and what he shall so receive in respect of the other personal estate and effects of the said testator, to the said Henry Nixon; and the said Governor and Company of the Bank of England, and the East India Company, and the South Sea Company, intend, respectively, to permit the aforesaid respective transfers of such respective quantities of stock and annuities to be made by the said Samuel Williams and John Sterling, unless they are prevented from so doing by the order of this honorable court, although they have been respectively applied to by your orator, not to permit such respective transfers; and the said Messrs. Hoare likewise intend to pay over, and part with, to the said Samuel Williams and John Sterling, the moneys, securities, and effects of the said testator in their hands, unless restrained by the order of this honorable court from so doing. And your orator further sheweth unto your lordship, that there are certain persons in America, who claim to be the heir at law and next of kin to the said testator, according to the laws of the State of Pennsylvania, one of the United States of North America; and they allege, that by the laws of Pennsylvania, within which the city of Philadelphia is situated, the real and personal property undisposed of by the will of a person who dies, not leaving a father, mother, wife, or children, but brothers or sisters of the whole, and also of

the half-blood, or their representatives; would be distributed as follows, that is to say: The brothers and sisters of the whole blood, and the legal representatives of such of the brothers and sisters of the whole blood as are dead, would inherit the real estate in fee simple as tenants in common, the representatives of those who are dead taking together the same share which their parent would have taken, if living, and the personal estate would be equally divided among the brothers and sisters of the whole and of the half-blood of their representative; the representatives of a deceased brother or sister, taking the share which their parent would have taken, if living; but if there are no brothers or sisters of the whole blood, or their representatives, then brothers and sisters of the half-blood would take the whole of the personal property, in exclusion of other kindred of the whole blood, and would inherit the real estate in fee simple, except such parts thereof as should come to the intestate by descent, devise, or gift of some one of his ancestors, in which case all those who should not be of the blood of such ancestor, would be excluded from the inheritance of such part of the real estate; and that by the laws of Pennsylvania, representation is not confined to the children of brothers and sisters and their issue, but is extended to their most remote descendants, children always taking together the same share which their parents would have done, if any living. And your orator further sheweth unto your lordship, that Esther Hartley, spinster, is one of the children of Benjamin Hartley, in the said will of the said testator named, who was his half-brother on the mother's side, and as such, she claims to be one of the heirs at law, according to the law of Pennsylvania, and one of the next of kin according to the laws both of England and of Pennsylvania, and in such characters, or in one of such characters, she alleges on behalf of herself, and the rest of the next of kin and heirs at law according to the laws aforesaid, that she is entitled to the residue of the personal estate and effects of the said testator; and she also claims to be entitled to the said legacy of £100, given by the said will of the said testator, to each of the children of Benjamin Hartley, who should be alive at his death. And your orator further sheweth unto your lordship, that your orator is advised and humbly submits, that upon the true construction of the said will of the said testator, the said Esther Hartley, and the said other claimants, are not entitled under the same will to take the residue of the personal estate and effects of the said testator; but that your orator is entitled to the same under the said will as the heir at law of the said testator. And your orator further sheweth unto your lordship, that the said Esther Hartley is out of the jurisdiction of this honorable court. And your orator sheweth unto your lordship, that under the aforesaid circumstances, your orator was in hopes that the said Henry Nixon would have accounted with your orator for the residue of the personal estate of the said testator, after payment of his funeral and testamentary expenses, debts, and legacies. But now, so it is, may it please your lordship, that the said Henry Nixon, combining and

confederating with the said defendants, Samuel Williams and John Sterling, and with the said Governor and Company of the Bank of England, and with the Honorable Company of Merchants trading to the East Indies, and with the Honorable [Company] of Merchants trading to the South Seas, and with the said Messrs. Henry Hoare, Henry Hugh Hoare, Charles Hoare, and Henry Merrick Hoare, and to and with the said Esther Hartley, and with divers other persons at present unknown to your orator, but whose names when discovered, your orator prays may be herein inserted with apt and proper matter to charge them as parties hereto, contriving how to injure and oppress your orator in the premises, positively refuses to account with, and pay to your orator, the residue and effects of the said testator, but threatens and intends to withdraw from this country, by means of his aforesaid agents, the said defendants, Samuel Williams and John Sterling, all the personal estate and effects of the said testator in this country, and to apply the same contrary to the will of the said testator. And your orator further charges and submits to this honorable court, *and* that the said defendants, the governor and company of the Bank of England, and the said East India Company, and the said South Sea Company, ought to be respectively restrained by the order of this honorable court from permitting any transfer to be made by the said defendant Henry Nixon, or the said defendants Samuel Williams and John Sterling, of the said respective stock and annuities of the said testator, standing in their or any of their names, or in the name of the said testator, in their respective books, and that the said defendants, Messrs. Hoare, ought likewise to be restrained from parting with the said money securities and effects, of the said testator; and also, that the said defendants, the governor and company of the Bank of England, should be ordered to transfer the aforesaid bank stock and bank annuities into the name of the accountant general of this honorable court, in trust in this cause; and also, that proper directions should be given for the sale of the aforesaid East India stock and South Sea stock of the said testator, and that the money arising therefrom respectively, should be invested in the purchase of 3 per cent. consolidated bank annuities, in the name of the said accountant general, in trust in this cause; and also, that the said defendants, Messrs. Hoare, should be directed to pay the money of the said testator in their hands into court, and that the same should be laid out in like manner; and your orator further charges and submits to this honorable court, that some proper person ought to be appointed for this honorable court to receive and get in all the other outstanding estate and effects of the said testator in this country; all which actings, doings, and pretences, of the said confederates, are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator in the premises. In consideration whereof, and forasmuch as your orator is remediless in the premises, by the strict rules of the common law, and cannot have adequate relief except in a court of equity, where matters of

this kind are properly cognizable and relievable; to the end, thereof, that the said Henry Nixon and Esther Hartley, when they shall come within the jurisdiction of this honorable court, the said Samuel Williams and John Sterling, the said governor and company of the Bank of England, the said East India Company, the said South Sea Company, and the said Messrs. Henry Hoare, Henry Hugh Hoare, Charles Hoare and Henry Merrick Hoare, and their confederates when discovered, may, upon their several and respective oaths, according to the best and utmost of their several and respective knowledge, remembrance, information and belief, a full, true, and direct, and perfect answer make, to all and singular the measures aforesaid, and that as fully as if the same was here repeated, and they particularly interrogated thereto; and more especially, that the said defendants may, in manner aforesaid, answer and set forth whether the said testator, Matthias Aspden, was not formerly a merchant in Philadelphia, in North America, or at some and what other part, and whether he did not quit that country, at the time herein before in that behalf mentioned, or at some and what other time, and whether he did not reside, and was not domiciled in this country, or in some and what other country, until the time of his death, or until some and what other period, except at the intervals herein before in that behalf mentioned, or at some and what other intervals; and whether, when he went to America at such intervals, he did not go thither only to transact or settle his affairs in America, or for some and what other purpose, and whether the said testator did not always return to this country as to his home, after such affairs were settled, or how otherwise; and whether the said testator did not, during such his residence in this country, and the place of his domicile, invest large, or some and what, sums of money *of money* in the purchase of stock and annuities in the funds of this country, and also in the funds of the East India Company, and of the South Sea Company, or of some and what other public company or companies, and in some and what other securities; and whether the said testator did not depart this life in the month of August, 1824, or at some and what other time; and whether he was not at the time of his death resident in King street, Holborn, London, or at some other place; and whether he was not domiciled in this country at the time of his death; and whether the said testator Matthias Aspden, was not in his lifetime, and at the time of making his will and codicils, possessed of very considerable personal property; and whether he was not and whether he did not, believe himself to be entitled to considerable, or some and what, real estate in this country; and whether he was not possessed of considerable, and what, property in the English, French and American funds, or some and which of them, and of various other and what kinds of personal estate and effects, to a very considerable, or some and what, amount in the whole; and whether the said testator did not in his lifetime duly make and execute his last will and testament in writing, and 3 codicils thereto, bearing date the

6th day of December, 1791, or some and what other date; and whether such will and codicils are not in the words and figures, or to the purport and effect, herein before in that behalf mentioned, or in some and what other words and figures, or to some and what other purport and effect, and whether the said testator did not afterwards depart this life at the time herein before in that behalf mentioned, or at some and what other time; and whether he ever, and when, in any and what manner, altered or revoked his said will and codicils, or any part thereof; and whether he did not die without any or what issue, and without any brother or sister of the whole blood; and whether he had ever, and where, been married, and whether he did not leave the several persons herein before in that behalf mentioned him surviving; and whether his half sister on the father's side was not illegitimate, and whether the said George Roberts, and Abr'm Siddon, did not both, or one and which, of them die, in the lifetime of the said testator, and whether the President of the bank at Philadelphia aforesaid, at the time of the death of the said testator, was not the said defendant, Henry Nixon; and whether the said testator did not, by the expressions in the said 3d codicil to his said will, "president of the Old Bank," mean the president of the bank at Philadelphia aforesaid, or how otherwise; and whether the said defendant, Henry Nixon, did not soon, and when, after the death of the said testator, duly prove the said will and codicil in the proper court at Philadelphia, in America; and whether he has not also, and when, duly proved the said will and codicils in the proper ecclesiastical court in this country; and whether he has not obtained probate thereof from the prerogative court of Canterbury, and thereby became legal, personal representative of the testator; and whether he has not possessed himself of all the personal estate and effects of the said testator, or some and what part thereof in America and elsewhere, except in this country; and whether same are not much more than sufficient to pay and satisfy all the funeral and testamentary expenses, debts, and legacies of the said testator, or some, and what part thereof, in America and elsewhere, except in this country; and whether same are not much more than sufficient to pay and satisfy all the funeral and testamentary expenses, debts, and legacies of the said testator, and also to leave a very considerable, or some, and what surplus; and whether the said testator was not at the time of his death, or at some, and what other time, among other descriptions of property, possessed of property in the English funds, and whether such property did not consist of such stock and bank annuities, and to such amount as is hereinbefore in that behalf mentioned, or of some and what other stock and annuities, or to some and what other amount; and whether the said testator was not also possessed at the time aforesaid, or at some and what other time, of East India stock, and of South Sea stock, to a considerable and what amount respectively; and whether such respective quantities of such respective stocks were not of such respective amounts, as so hereinbefore in that behalf mentioned, or of some and what other amount; and whe-

ther such respective quantities of such respective stocks and annuities, or some and what part thereof, are or is not still standing in the name of the testator, or in the name of some, and what other person or persons, in the respective books of the said respective companies, or in the books of one, and which of them; and whether the said testator did not also die possessed of other, and what personal estate, to a considerable and what amount in the whole; particularly whether he had not money to the amount of £790 3 5, in the hands of his bankers, the said Messrs. Hoare, or monies to some other and what amount; and whether the said testator did not leave your orator his heir-at-law; and whether the said Thomas Aspden, of Simondstone aforesaid, was not the common ancestor of the said testator and your orator; and whether the said last named Thomas Aspden did not die at the time hereinbefore in that behalf mentioned, or at some and what other time; and whether he had not issue 12 children, or some and what other number of children; and whether the eldest of them was not the aforesaid John Aspden, or some, and what other person; and whether the said John Aspden did not die and was not buried at Deptford aforesaid, or at some and what other place, at the time hereinbefore in that behalf mentioned, or at some and what other time; and whether he did not leave issue only one son, that is to say, the said Andrew Aspden, or some and what other issue; and whether the said Andrew Aspden did not not die, and was not also buried at Deptford aforesaid, at the time hereinbefore in that behalf mentioned, or at some and what other time; and whether he did not leave issue your orator, his only son and heir-at-law, or some and what other child or children, or some and what other person, his heir-at-law; and whether the name of the father of the said testator was not Matthias Aspden, or some and what other name; and whether the said last named Matthias Aspden was not the third, or some and what other, son of the said Thomas Aspden, the common ancestor, or some and what other, son of the said Thomas Aspden, the common ancestor, or of some and what other person; and whether the said Matthias Aspden, the father, was not resident in America, and did not, while he was there, marry an American woman; and whether the Christian name of such woman was not Rebecca; and whether the said Matthias Aspden, the father, had not issue by her after the said marriage, an only child, vizt. the said testator, or some and what other issue; and whether the said Matthias Aspden, the father, did not die in or about the year 1765, or at some and what other time, at Philadelphia, in North America, or at some and what other place; and whether he did not leave the said testator his only lawful issue, or any or what other issue him surviving; and whether upon failure of issue of the said Matthias Aspden, the father, and of the said Matthias Aspden, the testator, your orator as heir-at-law of the said John Aspden, the eldest brother of the said Matthias Aspden, the father, or in some or what other way, did not become, on the death of the said testator, his heir-at-law, or who else is the heir-at-law of the said

testator; and whether your orator, as such heir-at-law of the said testator, in some or what other character, is not entitled, under the aforesaid will of the said testator, to the residue of his personal estate and effects, after payment of his funeral and testamentary expenses, debts, and legacies; and whether such residue does not amount to a very large, and what sum; and whether the said Henry Nixon has not always been, and still is, resident at Philadelphia aforesaid, or at some and what other place; and whether he has not, and when, signed and sent over to the said defendants, Samuel Williams and John Sterling, or to some and what other persons or person, a general power of attorney to collect, get in, and receive all the personal estate and effects of the said testator in this country, or to such purport, or to some and what purport, with the direction to them to remit to him, the said Henry Nixon, in America, all such personal estate and effects of said testator, when and as soon as they are received by them the said defendants, Samuel Williams and John Sterling, or to such purport and effect, or to some and what other purport and effect; and whether the said defendant, Henry Nixon, does not threaten and intend to misapply such personal estate and effects in America, and instead of accounting with and paying to your orator the residue of the said testator's personal estate and effects as the residuary legatee under the said will, to pay and apply the the same in a manner which is in direct opposition to the said will, or how otherwise; and whether your orator has not caused notice of his aforesaid rights under the said will to be given to the said Samuel Williams and John Sterling, and has not requested them not to receive or remit such personal estate and effects of the said testator to the said Henry Nixon, or to such effect, or to some and what other effect; and whether the said defendants, Samuel Williams and John Sterling, do not threaten and intend under the said power of attorney, or under some and what other authority, to sell out the said bank stock and bank annuities, and likewise the said East India stock, and also the said South Sea stock, or some or one and which of them, or some and what part thereof, and also to receive the money, securities and effects of the said testator, at the said defendants, Messrs. Hoare, his bankers, and all the said personal estate and effects of the said testator in this country, or of some and what part thereof, and also what he shall receive in respect of the personal estate and effects of the said testator, to remit [to] the said defendant Henry Nixon, or to some and what other person; and whether the said defendants, the governor and company of the Bank of England, and the said East India Company, and the said South Sea Company, or some or one and which of them, do not intend respectively to permit the aforesaid transfers of such respective quantities of stock and annuities to be made by the said defendants, Samuel Williams and John Sterling; and whether they, or some and which of them, have not been respectively applied to by your orator not to permit such respective transfers, or some and

which of them; and whether the said defendants, Messrs. Hoare, do not likewise intend to pay over to the said Samuel Williams and John Sterling, or to some and what other persons or person, the money securities and effects of the said testator, in their hands; and whether the said Esther Hartley does not claim to be one of the next of kin and heirs at law to the said testator, according to the laws of the State of Pennsylvania, or according to some and what other laws; and whether the laws of the State of Pennsylvania, touching the descent and inheritance of real and personal property, are not as herein before mentioned, or what are the laws of the said State, touching descent of real and personal property; and whether the said Esther Hartley in the characters herein before in that behalf mentioned, or in some and what characters does not claim on behalf of herself and others, to be entitled under the said will of the said testator, to the residue of his personal estate and effects, and to the said legacy of £100, and whether she is not one of the children of Benjamin Hartley, in the said will of the said testator named; and whether, upon the true construction of the said will of the said testator, your orator is not entitled to the residue of the personal estate and effects of the said testator, under the said will, as the heir at law of the said testator, or in some and what other character; and whether the said Esther Hartley is not out of the jurisdiction of this honorable court; and whether under the circumstances your orator was not in hopes that the said defendant, Henry Nixon, would have accounted with your orator for the residue of the personal estate of the said testator, after payment of his funeral and testamentary expenses, debts and legacies, but whether he does not refuse so to do, and why, and for what reason; and whether the said defendant, Henry Nixon, does not threaten and intend to withdraw from this country by means of his aforesaid agents, the said defendants, Samuel Williams and John Sterling, or by some and what other means, all the personal estate and effects of the said testator in this country, or some and what part thereof, and to apply the same contrary to the said will of the said testator; and whether the said defendants, the governor and company of the Bank of England, and the said East India Company, and the said South Sea Company, ought not to be respectively restrained by the order of this honorable court from permitting any transfer to be made by the said defendant Henry Nixon, or the said defendants, Samuel Williams and John Sterling, of the said respective stock and annuities of the said testator standing in his name in their respective books; and whether the said defendants, Messrs. Hoare, ought not likewise to be restrained by the like order from parting with the said money of the said testator in their hands, or some and what part thereof; and whether the said defendants, the governor and company of the Bank of England, should not be ordered to transfer the said bank stock and bank annuities, or some and what [part] thereof respectively, into the name of the accountant general of this honorable court; and whether, also, the proper di-

rections should not be given for the sale of the said East India stock, and South Sea stock, of the said testator, or of some, and what, part thereof; and whether the money arising therefrom respectively, or some, and what, part should not be invested in the purchase of 3 per cent. consolidated bank annuities in the name of the said accountant general, in trust, in this cause; and whether the said defendants, Messrs. Hoare, should not be directed to pay the money of the testator in their hands, or some, and what, part thereof, or some, and what, part thereof should not be laid out in like manner; and whether some proper person ought not to be appointed by this honorable court, to receive and get in all the other outstanding estate and effects of the said testator in this country; and that the said defendant, Henry Nixon, may set forth an account of the personal estate and effects of the said testator possessed by him, or by any other persons or person by his order, or for his use, and how, and in what manner the same has been disposed of, and that an account may be taken by, and under, the direction of this honorable court, of the said personal estate and effects of the said testator, possessed or received by, or come to, the hands of the said defendant Henry Nixon, or of any other person or persons by his order, or for his use, or got in and possessed or secured, in any way, since the decease of the said testator; and that such personal estate and effects may be applied in payment of the said testator's funeral and testamentary expenses, and debts, and legacies, in a due course of administration, and that the residue of such personal estate and effects may be ascertained, and that your orator may be declared by this honorable court to be entitled, upon the true construction of the said will, as heir of the said testator to such residue, and that such residue may be accordingly directed, by this honorable court, to be paid to your orator; and that, in the meantime, the said defendant Henry Nixon, and the said defendants, Samuel Williams and John Sterling, may be restrained by the injunction of this honorable court from collecting and receiving any part of the personal estate and effects of the said testator in this country, and particularly from selling or transferring the said sums of £4,000 bank stock, £10,000 three per cent. consolidated bank annuities, £6,500 reduced three and a half per cent. bank annuities, and £6,000 £4 per cent. annuities, not assented to take £3 10 per cent. per annum in lieu thereof, in the manner, and at the times, regulated by the said act of the 5th year of his present majesty's reign, and £3,500 new four per cent. bank annuities, standing in the books of the said Governor and Company of the Bank of England in the name of the said testator, and the said sum of £3,000 stock, standing in the books of the said East India Company in the name of the said testator, and the said sum of £5,000 stock, standing in the books of the said South Sea Company in the name of the said testator, and from receiving the dividends or interest thereon respectively, and the said monies, securities, and effects, now in the hands of the

said defendants, Messrs. Hoare, as bankers of the said testator; and that the said defendants the Governor and Company of the Bank of England, and the said defendants the East India Company, and the said defendants the South Sea Company, may be respectively restrained from permitting any transfers of such respective sums to be made; and that, also, the said defendants, the Governor and Company of the Bank of England, may be directed to transfer the said respective stock and annuities now standing in the name of the said testator in their books, and also dividends accrued due thereon respectively, into the name of the accountant general of this honorable court in this cause; and also that proper directions may be given for the sale of the said stock respectively, standing in the name of the said testator in the respective books of the East India Company, and of the South Sea Company; and that the monies arising from such sale may, together with any other means belonging to the estate of the said testator, and paid into court, be laid out in the purchase of stock in the three per cent. consolidated bank annuities, in the name of the said accountant general, in trust, in this cause; and that the said defendants, Messrs. Hoare, may be restrained from paying and delivering the said money, securities, and effects, of the said testator, in their hands, to the said defendant Henry Nixon, or the said defendants Samuel Williams and John Sterling; and that the said defendants Messrs. Hoare may be ordered to pay the said money of the said testator, in their hands, into court; and that the said defendants Samuel Williams and John Sterling may be restrained, by the injunction of this honorable court, from remitting any part of the personal estate and effects of the said testator in this country, to the said defendant Henry Nixon; and that some proper person may be appointed by this honorable court to receive and get in all other the outstanding personal estate and effects of the said testator, and for such further and other relief as to your lordship shall seem meet, and the nature of his case may require. May it please your lordship, the premises considered, to grant unto your orator, not only his majesty's most gracious writ of injunction, issuing out of and under the seal of this honorable court, to restrain the said Henry Nixon from receiving and withdrawing from this country, any of the personal estate and effects of the said testator, and to restrain the said Samuel Williams and John Sterling from receiving or remitting the same estate and effects, or any part thereof, to the said Henry Nixon, and particularly restraining them, respectively, from selling or transferring the bank stock; 3 per cent. consolidated bank annuities; reduced 3½ per cent. bank annuities; new 4 per cent. bank annuities; East India stock, and South Sea stock, standing in the testator's name, and from receiving the dividends thereon respectively, and the said moneys, securities, and effects, in the name of Messrs. Hoare, or any other, the personal estate and effects of the said testator in this country; and also to restrain the said governor and company of the Bank of England,

and the said honorable East India Company, and the said honorable South Sea Company, respectively, from making, or permitting to be made, any transfer or sale of such stock and bank annuities, or any part of the same, respectively; and also to restrain the said Messrs. Hoare from paying over or parting with all or any part of the moneys, securities, and effects of the said testator in their hands; but now also to grant unto your orator, his majesty's most gracious writ or writs of subpœna, to be directed to the said Henry Nixon, Esther Hartley, when they shall respectively be within the jurisdiction of this honorable court, Samuel Williams and John Sterling, the said governor and company of the Bank of England, the said honorable company of merchants trading to the East Indies, the said honorable company of merchants trading to the South Seas, the said Henry Hoare, Henry Hugh Hoare, Charles Hoare, and Henry Merrick Hoare, and the rest of the aforesaid confederates, when discovered, thereby commanding them, and every of them, at a certain day, and under a certain pain, therein to be limited, personally to be and appear before your lordship in this honorable court, and then and there, upon their several and respective corporal oaths, to make a direct and perfect answer to all and singular the premises; and further, to stand to, perform, and abide such order, direction, and decree as to your lordship shall seem meet.

And your orator will ever pray, &c.

JOHN NEWLAND.

Amended.

S. F. MILFORD.

X'd.—J. R. S.

This is the paper exhibit or document referred to by James Robinett Scruby, in his examination as the paper marked I.

JAMES R. SCRUBY.
W. COWBURN,
ALFRED KING.

This is the paper exhibit or document referred to by Frederick Samuel Milford, in his examination as the [paper] marked I.

SAM. FRED'K MILFORD.
W. COWBURN,
ALFRED KING.

In chancery, 29th April, 1828.

ALLEN, by SEWELL.

The answer of Henry Nixon, one of the defendants to the annexed bill of complaint of John Aspden, complainant.

This defendant, saving and reserving to himself the same benefit and advantage of exception to the said complainants' said amended bill of complaint, as in and by his answer to the said complainants' original bill of complaint, is saved and reserved for answer to the said amended bill, or unto so much thereof as this defendant is ad-

vised it is in any way material or necessary for him to make answer unto, answereth and saith, he has been informed and believes, that Matthias Aspden, the testator in the said bill named, was described in the books of the Governor and Company of the Bank of England, as the proprietor of £10,000 3 per cent. consolidated bank annuities, by the names and description of Matthias Aspden, of Philadelphia, North America, esquire, and that as the proprietor of £5,000 South Sea stock, he was described in the books of the South Sea Company, as the right honorable Matthias Aspden, of Philadelphia, North America, but for greater certainty as to the description of the said Matthias Aspden, in the said books, this defendant craves leave to refer thereto, when produced. And this defendant further saith, that save as aforesaid, and as in his said former answer mentioned, he does not know and cannot answer as to his belief or otherwise, whether Matthias Aspden, the testator, in the said bill named, did reside, and was domiciled in this country, or in any other country, until the time of his death, or until any other period, except at the intervals in the said bill in that behalf mentioned, or at any other intervals in the said bill in that behalf mentioned, or at any other intervals, save and except as appears by the facts herein, and in this defendant's former answer, stated or referred to. And this defendant says, that George Roberts and Abraham Liddon, in the will of the testator, and in this defendant's former answer, respectively named, both resided at Philadelphia, in the United States of America, and that they both died there; and this defendant does not know, and cannot answer, as to his belief or otherwise, whether the said testator was, or whether he did believe himself to be, entitled to considerable, or any, real estate in England; however, this defendant does not believe, that the said testator did, at the time of making his will and codicils in the said bill mentioned, believe himself to be entitled to any real estate in England; but this defendant believes, that the said testator did then believe himself to be entitled to some real estate in America; and this defendant does not know the same of his own knowledge, but he has been informed and believes, that the said testator did depart this life without leaving any brother or sister of the whole blood, or of the half blood, him surviving; and that he did leave descendants of half brothers and sisters on the mother's side, and descendants of a half sister of the father's side, him surviving; but this defendant denies to the best of his knowledge, information, and belief, that the said testator's half sister, on his father's side, was illegitimate; and this defendant believes, that Esther Hartley, another defendant to the said bill of complaint, does claim to be one of the next of kin and heirs at law of the said testator, according to the laws of the State of Pennsylvania in the said bill mentioned, and that the laws of the State of Pennsylvania touching the descent and inheritance of real and personal property are as in the said amended bill. And this defendant's said former answer in that

behalf mentioned, and that the said Esther Hartley in the characters in the said amended bill in that behalf mentioned, does claim on behalf of herself and others, to be entitled under the will of the said testator, to the residue of his personal estate and effects, and to the legacy of £100, in the said bill mentioned, and that she is one of the children of Benjamin Hartley, in the will of the said testator named, and that the said Esther Hartley is in America, out of the jurisdiction of this honorable court; and this defendant submits to the judgment of this honorable court, whether, upon the true construction of the said will of the said testator, the complainant is entitled to the residue of the personal estate and effects of the said testator, under the said will, as the heir at law of the said testator, or in any other character; without this, that, &c.

H. NIXON.

This answer was taken, and the above named Henry Nixon, the defendant, was duly sworn to the truth thereof, upon the Holy Evangelists at the house of Henry Hollingsworth, situate in Philadelphia, in the United States of America, on the 17th day of March, in the year of our Lord 1828, by virtue of the commission hereto annexed, before us,

HENRY HOLLINGSWORTH,
JACOB R. SMITH.

This is the paper exhibit, or document, referred to by James Robinett Scruby, in his examination, as the paper marked K.

JAS. R. SCRUBY,
W. COWBURN,
ALFRED KING.

This is the paper exhibit, or document, referred to by Samuel Frederick Milford, in his examination, as the paper marked K.

SAM'L FRED'K MILFORD,
W. COWBURN,
ALFRED KING.

In chancery, 18th March, 1828—VESEY.

To the right honorable John Singleton, baron Lyndhurst of Lyndhurst, in the county of Southampton, lord high chancellor of Great Britain.

Humbly complaining, shew unto your lordship, your oratrixes and orator, Jennet Jones, otherwise Jenet Jones of Old street, in the parish of St. Luke, in the county [of] Middlesex, widow, and Thomas Poole, 'Chequer Court, Old street, in the same parish, and Mary his wife, that John Aspden, deceased, on or about the 30th day of July, 1825, filed his bill in this honorable court against Henry Nixon, Samuel Williams, John Stirling, the governor and company of the Bank of England, the honorable company of merchants trading to the East Indies, the honorable company of mer-

chants trading to the South Seas, Henry Hoare, Henry Hugh Hoare, Charles Hoare and Henry Merrick Hoare, praying that an account might be taken by and under the direction of this honorable court, of the personal estate and effects of Matthias Aspden, the testator in the said bill named, possessed or received by, or come to the hands of, the said defendant Henry Nixon, or any other person or persons, by his order, or for his use, or got in and possessed, or secured in any way, since the decease of the said testator; and that such personal estate and effects might be applied in payment of the said testator's funeral and testamentary expenses, debts and legacies, in a due course of administration, and that the residue of such personal estate and effects might be ascertained, and that the said complainant might be declared by this honorable court to be entitled, upon the true construction of the said will, as heir of the said testator to such residue, and that such residue might be accordingly directed by this honorable court to be paid to the said complainant; and that in the mean time the said defendant Henry Nixon, and the said defendant[s] Samuel Williams and John Sterling, might be restrained by the injunction of this honorable court from collecting and receiving any part of the personal estate and effects of the said testator in this country, and particularly from selling, or transferring, the sums of £4,000 bank stock, £10,000 3 per cent. consolidated bank annuities, £12, 500, £3 10 per cent. reduced bank annuities, and £3,500 new £4 per cent. reduced bank annuities, standing in the books of the said governor and company of the Bank of England, in the name of the said testator; the sum of £3,000 stock standing in the books of the said East India Company, in the name of the said testator; and the sum of £5,000 stock, standing in the books of the said South Sea Company, in the name of the said testator; and from receiving the dividends thereon respectively, and the monies, securities and effects, then in the hands of the said defendants, Messrs. Hoare, as bankers of the said testator; and that the said defendants, the governor and company of the Bank of England, and the said defendants, the East India Company, and the said defendants the South Sea Company, might be respectively restrained from permitting any transfers of such respective sums to be made; and that also, the said defendants, the governor and company of the Bank of England, might be directed to transfer the said respective stock and annuities standing in the name of the said testator in their books, and also the dividends accrued thereon respectively, in the name of the accountant general of this honorable court in this cause; and also that proper directions might be given for the sale of the said stock respectively, standing in the name of the said testator, in the respective books of the East India Company, and of the South Sea Company, and that the monies arising from such sale might, together with any other monies belonging to the estate of the said testator and paid into court, be laid out in the pur-

chase of stock in the 3 per cent. consolidated bank annuities, in the name of the said accountant general, in trust in this cause; and that the said defendants, Messrs. Hoare, might be restrained from paying and delivering the said monies, securities and effects of the said testator in their hands to the said defendant, Henry Nixon, or the said defendants, Samuel Williams and John Stirling; and that the said defendants, Messrs. Hoare, might be ordered to pay the said money of the said testator in their hands into court; and that the said defendants, Samuel Williams and John Stirling might be restrained, by the injunction of this honorable court, from remitting any part of the personal estate and effects of the said testator in this country to the said defendant, Henry Nixon; and that some proper person might be appointed, by this honorable court, to receive and get in all other outstanding personal estate and effects of the said testator; and your oratrixes and orator further shew unto your lordship, that the said several defendants to the said bill appeared, and put in their answers thereto, and that the said bill was, by virtue of an order made on or about the 28th day of May, 1827, amended, and Esther Hartley made a defendant thereto, but that no further proceedings have been had in the said suit, as by the said bill and other proceedings, reference being thereto had, will more fully and at large appear; and your oratrixes and orator further shew unto your lordship, that the said plaintiff, John Aspden, afterwards, and on or about the 1st day of March, 1828, departed this life a widower and intestate, leaving your oratrixes his only children, him surviving, who are his only next of kin, and his co-heirs; and that your oratrixes, on or about the 11th day of March, 1828, obtained letters of administration of the goods and chattels, debts and credits, of the said testator, to be granted to them by and out of the prerogative court of the Archbishop of Canterbury, and by virtue thereof became, and now are, his personal representatives, and that they are entitled to all the benefits which the said intestate was entitled to, under and by virtue of, the last will of the said testator, Matthias Aspden; and your oratrixes and orator further shew, that the said suit and proceedings became abated by the death of the said John Aspden, and that your oratrixes and orator are advised, that they are entitled to have the said suit and proceedings revived against the said defendants, and to be put in the same plight and condition as the same were in at the time of the abatement thereof. To the end, therefore, that the said suit and proceedings, which so became abated, as aforesaid, may stand revived, and be in the same plight and condition as the same were in at the time of the death of the said John Aspden, or that the said defendants may shew good cause to the contrary, may it please your lordship, the premises considered, to grant unto your oratrixes and orator his majesty's most gracious writ or writs of subpœna, issuing out of, and under the seal of, this honorable court, to be directed to the said Henry Nixon, Esther Hartley, Samuel Williams,

John Stirling, the governor and company of the Bank of England, the East India company, the South Sea company, Henry Hoare, Henry Hugh Hoare, Charles Hoare, and Henry Merrick Hoare, thereby commanding them, and every of them, at a certain day, and under a certain pain, therein to be limited, personally to be and appear before your lordship in this honorable court, and then and there to answer the premises, and shew cause, if they can, why the said suit, and all the proceedings therein, should not stand revived, and be in the same plight and condition as they were in at the time of the decease of the said John Aspden; and that the cause and proceedings may stand revived, and the said Henry Nixon, Esther Hartley, Samuel Williams, John Stirling, the governor and company of the Bank of England, the East India company, the South Sea company, Henry Hoare, Henry Hugh Hoare, Charles Hoare, and Henry Merrick Hoare, stand to, perform, and abide by, such order, direction, and decree herein, as to your lordship shall seem meet. And your oratrixes and orator shall ever pray, &c.

S. F. MILFORD.

This is the paper exhibit or document referred to by James Robinett Scruby, in his examination, as the paper marked L.

JAS. R. SCRUBY,
W. COWBURN,
ALFRED KING.

This is the paper exhibit or document referred to by Samuel Frederick Milford, in his examination, as the paper marked L.

SAML. FREDK. MILFORD,
W. COWBURN,
ALFRED KING.

VICE CHANCELLOR. Messrs. MILNE & Co.

Saturday, the seventeenth day of July, in the first year of the reign of his majesty King William the Fourth, one thousand eight hundred and thirty, between Jennet Jones, otherwise Jenet Jones, and Thomas Poole and Mary his wife, plaintiffs, Henry Nixon, Samuel Williams, John Sterling, the governor and company of the Bank of England, the honorable company of Merchants of England, trading to the East Indies, the honorable company of Merchants, trading to the South Seas, Henry Hoare, Henry Hugh Hoare, Charles Hoare, and Henry Merrick Hoare, and Esther Hartley, out of the jurisdiction of the court, defendants, by original and amended bill, and bill of revivor.

This cause, coming on this present day to be heard and debated before this court, in the presence of counsel, learned, for the plaintiffs, and for all the defendants, except the defendant Esther Hartley. Upon debate of the measure and hearing, an order dated the ninth day of August, one thousand eight hundred and twenty-five, an order dated the thirty-first day of July, one thousand eight hun-

dred and twenty-one, and the accountant general's certificate read, and what was alleged by the counsel for the plaintiffs, and for the said defendants, this court doth order, that the injunction awarded in the original cause of Aspden vs. Nixon, pursuant to an order made in the said cause, bearing date the ninth day of August, one thousand eight hundred and twenty-five, to restrain the defendants, Samuel Williams and John Sterling, from selling and transferring the four thousand pounds bank stock, ten thousand pounds three pounds per cent. consolidated annuities, six thousand five hundred pounds three pounds ten shillings per cent. reduced annuities, and six thousand pounds bank four pounds per cent. annuities, not assented to, the said six thousand five hundred pounds, and six thousand pounds in the said injunction stated, by mistake, as twelve thousand five hundred pounds reduced three pounds ten shillings per cent. annuities, and three thousand five hundred pounds new four per cent. annuities; and the said last named defendants to be restrained from selling or transferring the said three thousand pounds East India stock, and five thousand pounds South Sea stock; and that the said defendants, Samuel Williams and John Sterling, should be, in like manner, restrained from receiving any dividends, due or to accrue due, on the said bank annuities and stocks respectively, save and except the dividends then already due on the said East India and South Sea stocks; and that the said defendants, the governor and company of the Bank of England, should also be restrained from making, or permitting to be made, any transfer or sale of the said bank annuities and stocks, and from paying any dividends thereon; and that the said defendants, the East India company, should be, in like manner, restrained from making, or permitting to be made, any sale or transfer of the three thousand pounds East India stock; and that the said defendants, the South Sea company, should be, in like manner, restrained from making, or permitting to be made, any transfer or sale of the five thousand pounds South Sea stock; and that the said defendants, the East India company, and the South Sea company, should be also, in like manner, restrained from paying any future dividends to accrue due upon the said East India stock and South Sea stock, respectively, until the defendants should fully answer the petitioner's bill, or this court make other order to the contrary, be dissolved. And it is ordered that the sum of two hundred and twenty-eight pounds one shilling and eleven pence cash, in the bank placed to the credit of the cause, Aspden and Nixon, be paid to the defendant, Henry Nixon; and for the purposes aforesaid, the said accountant general is to draw on the the bank according to the form prescribed by the act of Parliament, and the general rules and orders of this court in that case made and provided; and this court doth order that the plaintiff's bill do stand dismissed out of this court, with costs, to be taxed by the master of this court in rotation. J. C. FRY.

PACKER
vs.
NIXON.

To the honorable the judges of the circuit court of the United States, third circuit, in and for the eastern district of Pennsylvania.

The petition of Thomas Aspden, a citizen of the State of Pennsylvania, respectfully sheweth, that, on the twenty-sixth day of November, A. D. one thousand eight hundred and thirty-one, the petition of his late father, John Aspden, (since deceased,) was presented to this honorable court, setting forth that he firmly believed he was entitled as heir-at-law, and residuary devisee, to the residue of the estate devised in and by the will of Matthias Aspden, deceased, of which said will the said Henry Nixon appeared in this court as executor, in a bill filed against him on the equity side thereof by Samuel Packer, No. 1, to April sessions, 1828, and praying, &c.

And your orator further sheweth unto your honors that said Samuel Packer, on the 15th day of June, A. D. 1835, filed his amended bill in this honorable court, in which, among other things, he sets forth that said testator, Matthias Aspden, was for a long time resident and domiciled in England; your orator also expressly avers, that said Matthias, the testator, was resident and domiciled in England for more than forty-eight years up to the time of his death, and at the time of his death; and, as evidence of the same, your orator refers your honors to certain letters and other documents in the handwriting of said Matthias, the testator, (some of which has been published by an order of court,) reference being thereunto had, will appear.

And your orator further sheweth, that the said Henry Nixon hath departed this life; and that afterwards, to wit, on the day of May, A. D. one thousand eight hundred and forty-one, letters of administration, de bonis non cum testamento annexo, of the said Matthias Aspden, deceased, were granted by the register for the probate of wills, for the city and county of Philadelphia, to Joseph Trotter, esq'r, of the city of Philadelphia, who hath taken upon himself the burthen of the execution thereof; and the said suit and proceedings having become abated by the death of the said Henry Nixon, the said Samuel Packer hath exhibited his bill to revive the same against the said Joseph Trotter, administrator as aforesaid; your petitioner therefore prays that he may be admitted on the record as a party to the said revived suit for the purposes set forth in his late father's original petition, to whom your orator is his successor, executor, his eldest son and heir-at-law; and your orator will ever pray, &c., &c.

THOS. ASPDEN.

April 3d, 1843.

And now, to wit, this ninth day of November, A. D. one thousand eight hundred and forty-three, this cause came on to be heard by counsel on the amended bill, the pleas in bar, and replications and rejoinders, and on the testimony relating thereto; and the judges being opposed in opinion as to the effect of the evidence in support of the pleas in bar—the point upon which such disagreement happens, to wit: Is the evidence, touching the plea in bar, sufficient to support it? is now, during the same term, at the request of Jacob Hoffman and Charles J. Ingersoll, esquires, counsel for Thomas Aspden, executor of John Aspden, deceased, one of the complainants stated, under the directions of the said judges, to be certified, under the seal of the court, to the Supreme Court of the United States, at their next session, for final decision.

In the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, of April sessions, 1828.

SAMUEL PACKER, and others,
vs.
JOSEPH TROTTER, administrator, de bonis non with the will annexed, of Matthias Aspden, deceased. } No. 1—in equity.

I certify the foregoing to be true and faithful copies of the amended bill, the pleas in bar, and replications and rejoinders, and the testimony relating thereto, and of the point upon which the judges of the said court were opposed in opinion.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, at Philadelphia, this twentieth day of December, A. D. 1843, and in the sixty-eighth year of the independence of the said United States. [SEAL.]

FRA. HOPKINSON, *Clk. Circ't Ct.*

Filed, 1844.